

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1422

IN THE
United States Court of Appeals
For The Second Circuit

No. 76-1422

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

FRANK CARUSO, MICHAEL DiRIENZO, EMIL ANNATONE, ROBERT
D'ADDARIO, JOSEPH MESSINA and MICHAEL DITURI,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Volume II
JOINT APPENDIX ON BEHALF OF APPELLANTS

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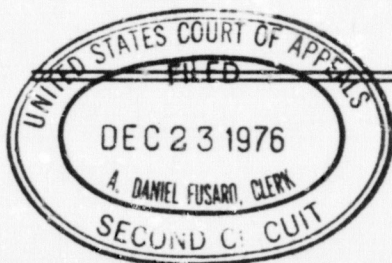
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APPLICATION OF THE UNITED STATES:

OF AMERICA IN THE MATTER OF AN : Misc. No.

ORDER AUTHORIZING THE INTER- :

CEPTION OF WIRE COMMUNICATIONS :
-----x

M-19-97(33)

ORDER

AUTHORIZING INTERCEPTIONS OF WIRE AND ORAL COMMUNICATIONS

TO: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice

Application under oath having been made before me by
JAMES W. DOUGHERTY, an attorney with the Organized Crime and
Racketeering Section of the United States Department of Justice,
currently assigned to the Southern District of New York, and an
"Investigative or law enforcement officer" as defined in Section
2510(7) of Title 18, United States Code, for an Order authorizing
the interception of wire and oral communications pursuant to
Section 2518 of Title 18, United States Code, and full consider-
ation having been given to the matters set forth therein, the
court finds:

(a) there is probable cause for belief that
JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash",
VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE
(LNU), VINCENT LANDOLFI a/k/a UNCLE, and
others as yet unknown have committed and are
committing offenses involving the operation
of an illegal gambling business of five or more
persons, which illegal gambling business has a
gross revenue in excess of \$2,000 in a single
day or has been in substantially continuous
operation for a period in excess of thirty (30)

days in violation of Article 225 of the Penal Law of the State of New York and thereby in violation of Section 1955 a. Title 18, United States Code, and are conspiring to commit such an offense in violation of Section 371 of Title 18, United States Code;

(b) there is probable cause to believe that particular wire and oral communications concerning these offenses will be obtained through the interception, authorization for which is herewith applied for. In particular these wire and oral communications will concern the receipt and placing of bets and lay-off wagers on horse races and sporting events, the exchange of line information, and the dissemination of such information to persons engaged in the unlawful business of gambling and the participants in the commission of the above described offenses;

(c) normal investigative procedure reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) there is probable cause to believe that JOSEPH DENTI, JOSEPH SARCINELLA a/k/a Sash, VITO Di SALVO, JOSEPH FALCO, Skippy (LNU), Arnie (LNU), VINCENT LANDOLFI a/k/a Uncle, and others as yet unknown are using telephones bearing numbers (212) 584-4399, located at 660 Crescent Ave., Bronx, New York and (212) 226-8904, located at 80 Thompson Street, New York, New York in a continuing conspiracy to violate Section 1955 of Title 18, United States Code, and that the establishments known as Al's Espresso, 663 Crescent Avenue, Bronx, New York and Cafe Espresso, 2339 Arthur Avenue, Bronx, New York are being used

by the aforementioned individuals and others as yet unknown to carry on their illicit enterprises in a clandestine manner, i.e., by holding routine pre-arranged meetings under the protection of "look-outs" for the purpose of exchanging gambling information and, in the case of Al's Espresso, the maintenance and operation of a walk-in type gambling parlor and a cash & bet-slip "drop". WHEREFORE, it is hereby ordered that:

Special Agents of the Federal Bureau of Investigation, United States Department of Justice are authorized, pursuant to application authorized by the Attorney General of the United States, the Honorable RICHARD G. KLEINDIENST, under the powers conferred on the Attorney General by Section 2516 of Title 18, United States Code, to:

- (a) intercept wire communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, and others as yet unknown concerning the above described offenses to and from telephone numbers (212) 584-4399 and (212) 226-8904 as described above;
- (b) intercept oral communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, and others as yet unknown concerning the above offenses emanating from Al's Espresso, 663 Crescent Avenue, Bronx, New York and Cafe Espresso, 2339 Arthur Avenue, Bronx, New York.
- (c) such interception shall not automatically terminate when the type of communication described above in paragraphs (a) and (b) have

first been obtained, but shall continue until communications are intercepted which reveal the manner in which JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, and others as yet unknown participate in the illegal gambling business by five or more persons which illegal gambling business has a gross revenue in excess of \$2,000 in a single day, and which reveal the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of this Order, whichever is earlier.

PROVIDING THAT, this Authorization to intercept wire and oral communications shall be executed as soon as practicable, after signing of this order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective, or, in any event, at the end of fifteen (15) days from the date of this Order.

PROVIDING ALSO, that James W. Dougherty shall provide the Court with a report on the 5th and 10th day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continuing interception.

It is further ordered that the New York Telephone Company, a communication carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant

forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company, to be compensated for by the applicant at the prevailing rates.

1cl Harold R. Tuley, Jr.
UNITED STATES DISTRICT JUDGE

February 7, 1993
DATE

JWD:feh

-----X
APPLICATION OF THE UNITED STATES :
OF AMERICA IN THE MATTER OF AN : Misc. No.
ORDER AUTHORIZING THE USE OF A :
PEN REGISTER :
-----X

M-19-97 (33)

ORDER

AUTHORIZING USE OF A PEN REGISTER

TO: Special Agents of the Federal Bureau of Investigation,
United States Department of Justice

Affidavit having been made before me by RICHARD A.
NALLEY, Special Agent of the Federal Bureau of Investigation,
United States Department of Justice, and full consideration
having been given to the matters set forth therein the court
finds:

(a) there is probable cause for belief that
JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash",
VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU),
ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE,
and others as yet unknown have committed
and are committing offenses listed in Section
2516 of Title 18, United States Code, involving
the carrying on of an illegal gambling business
by five or more persons, which illegal gambling
business has a gross revenue in excess of
\$2,000 in a single day, in violation of Section
1955 of Title 18, United States Code, and are
conspiring to commit such an offense in
violation of Section 371 of Title 18, United
States Code;

(b) there is probable cause to believe that
two (2) telephones bearing numbers (212) 584-
4399 subscribed in the name of Rose F. Chianese,
660 Crescent Avenue, Bronx, New York, and (212)

-----X
IN THE MATTER OF THE APPLICATION :
OF THE UNITED STATES FOR AN : Misc. No.
ORDER AUTHORIZING THE INTERCEPTION : M-19-97 (33)
OF WIRE COMMUNICATIONS :
-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK,

APPLICATION

James W. Dougherty, a Departmental Attorney for the United States Department of Justice, currently assigned to the Southern District of New York, being duly sworn, states:

This sworn application is submitted in support of an Order authorizing the interception of wire and oral communications. This application has been submitted only after lengthy discussion concerning the necessity for such an application with various officials of the Organized Crime and Racketeering Section, United States Department of Justice, Washington, D. C., together with agents of the Federal Bureau of Investigation.

1. He is an "investigative or law enforcement officer-- of the United States" within the meaning of Section 2510(7) of Title 18, United States Code -- that is, he is an attorney authorized by law to prosecute or participate in the prosecution of offenses enumerated in Section 2516 of Title 18, United States Code.

2. Pursuant to the powers conferred on him by Section 2516 of Title 18, United States Code, the Attorney General of the United States, the Honorable Richard G. Kleindienst, has authorized this application for an order authorizing the interception of wire and oral communications. Attached to this application as Exhibit A are the letter of notification of approval from the Assistant Attorney General of the Criminal Division, the Honorable Henry E. Petersen, and the Memorandum of Authorization approved by the Attorney General of the United States, the Honorable Richard G. Kleindienst.

3. This application seeks authorization to intercept

2.

wire and oral communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (last name unknown) (LNU) ARNIE (LNU), VINCENT LANDOLFI, a/k/a UNCLE, and others as yet unidentified, who have committed, and are committing, offenses enumerated in Section 2516 of Title 18, United States Code, involving the carrying on of an illegal gambling business by five or more persons, which illegal gambling business has a gross revenue in excess of \$2,000 in a single day or has been in substantially continuous operation for a period in excess of thirty (30) days in violation of Article 225 of the Penal Law of the State of New York and thereby in violation of Section 1955 of Title 18, United States Code, and are conspiring to commit such an offense in violation of Section 371 of Title 18, United States Code.

4. Section 803 of Title VIII, entitled Syndicated Gambling of the "Organized Crime Control Act of 1970", Public Law 91-452, 91st Congress, approved October 15, 1970, amended Chapter 95, Title 18, United States Code, by adding a new section, Section 1955, Prohibition of Illegal Gambling Businesses. Section 801 of Title VIII of this Act contains special findings that illegal gambling involves wide-spread use of, and has an effect upon, interstate commerce and the facilities thereof.

5. He has discussed all the circumstances of these offenses with Special Agent Richard A. Nalley of the New York Office of the Federal Bureau of Investigation who has directed and conducted the investigation herein, and has examined the affidavit of Special Agent Richard A. Nalley (attached to this application and incorporated by reference herein), which alleges the facts therein in order to show that:

(a) there is probable cause to believe that JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE,

and others as yet unknown

have committed and are committing offenses listed in Section 2516 of Title 18, United States Code, involving the carrying on of an illegal gambling ^{which} business/has a gross revenue in excess of \$2,000 in a single day or has been in substantially continuous operation for a period in excess of thirty (30) days in violation of Article 225 of the Penal Law of the State of New York and thereby in violation of Section 1955 of Title 18, United States Code, and are conspiring to commit such an offense in violation of Section 371 of Title 18, United States Code.

(b) there is probable cause to believe that particular wire and oral communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a Uncle,

and others as yet unknown, concerning these offenses will be obtained through the interceptions, authorization of which is herewith applied for. In ^{and oral} particular, these wire/communications will concern the receipt and placing of bets and lay-off wagers on horse races and sporting events, the exchange of line information, and the dissemination of such information to persons engaged in the unlawful business of gambling and the participants in the commission of said offenses.

(c) normal investigative procedures reasonably appear to be unlikely to succeed and are too dangerous to be used.

(d) there is probable cause to believe that JOSEPH DENTI, JOSEPH SARCINELLA a/k/a Sash, VITO Di SALVO, JOSEPH FALCO, Skippy (LNU), Arnie (LNU), VINCENT LANDOLFI a/k/a Uncle,

and others as yet unknown are using telephones bearing numbers (212) 584-4399, located at 660 Crescent Ave., Bronx, New York and (212) 226-8904, located at 80 Thompson Street, New York, New York in a continuing conspiracy to violate Section 1955 of Title 18, United States Code, and that the establishments known as Al's Espresso, 663 Crescent Avenue, Bronx, New York and Cafe Espresso, 2339 Arthur Avenue, Bronx, New York are being used by the aforementioned individuals and others as yet unknown to carry on their illicit enterprises in a clandestine manner, i.e., by holding routine pre-arranged meetings under the protection of "look-outs" for the purpose of exchanging gambling information and, in the case of Al's Espresso, the maintenance and operation of a walk-in type gambling parlor and a cash & bet-slip "drop".

6. By order of the Court dated November 10, 1972, the Honorable Murray I. Gurfein, United States District Judge, Southern District of New York, authorized the interception of wire communications on the following telephone number: (212) 365-1922.

7. By order of the court dated November 30, 1972, the Honorable Constance Baker Motley, United States District Judge, Southern District of New York, authorized the interception of wire communications on the following telephone numbers: (212) 584-2992, (212) 733-5195 and (212) 364-5827.

8. By order of the Court dated December 8, 1972, the Honorable Murray I. Gurfein, United States District Judge, Southern District of New York, authorized an extension on the original interception of wire communications on the following telephone number: (212) 365-1922.

5.

9. By order of the Court dated December 27, 1972, the Honorable Robert L. Carter, United States District Judge, Southern District of New York, authorized the interception of wire communications on telephone bearing number (212) 584-4399.

10. No other application is known to have been made to any judge for authorization to intercept, or for approval of interceptions of wire communications involving any of the persons, facilities or places specified in this application, except as indicated in the accompanying affidavit of Agent Nalley.

WHEREFORE, your affiant believes that probable cause exists to believe that JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, and others as yet unknown have committed and are committing offenses listed in Section 2516 of Title 18, United States Code, involving the financing, managing, supervising, directing or owning an illegal gambling business and a conspiracy to commit the above-described offenses; that JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, VINCENT NAPOLI a/k/a JIMMY NAPP, and others as yet unknown have used, and are using the above-described telephones and premises in connection with the commission of the above-described offenses; that communications of JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE, and others as yet unknown concerning these offenses will be intercepted to and from the above-described telephones and premises; and that normal investigative procedures appear unlikely to succeed.

On the basis of the allegations contained in the application and on the basis of the affidavit of Special Agent Richard A. Nalley, which is attached hereto and made a part hereof, affiant requests this court issue an Order pursuant to the power conferred on it by Section 2518 of Title 18, United

States Code, authorizing the Federal Bureau of Investigation of the United States Department of Justice to intercept wire and oral communications to and from the above-described telephones and premises which interception shall not automatically terminate when the type of communication described in paragraph 5(b) above, has first been obtained but shall continue until communications are intercepted which reveal the manner in which JOSEPH DENTI, JOSEPH SARCINELLA a/k/a "Sash", VITO DI SALVO, JOSEPH FALCO, SKIPPY (LNU), ARNIE (LNU), VINCENT LANDOLFI a/k/a UNCLE,

and others as yet unknown, participate in the illegal use of telephone facilities for the transmission of gambling information and the clandestine use of the aforementioned premises and which reveal the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of fifteen (15) days from the date of that Order, whichever is earlier.

It is further requested that this Court issue an Order pursuant to the power conferred on it by Section 2518(4)(e) of Title 18, United States Code, directing that the New York Telephone Company, a communication common carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company, to be compensated for by the applicant at the prevailing rates.

James W. Dougherty
Special Attorney
U. S. Department of Justice

Subscribed and sworn to before me

this day of , 1973.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOUTHERN DISTRICT OF NEW YORK SS:

RICHARD A. NALLEY, Special Agent, Federal Bureau of Investigation, New York, New York, being duly sworn states:

1. I am an "investigative or law enforcement officer... of the United States" within the meaning of Section 2510(7) of Title 18, United States Code -- that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Section 2516 of Title 18, United States Code.

2. I make this affidavit in support of an application which seeks authorization to intercept wire and oral communications concerning offenses involving violations of Article 225 of the penal laws of the state of New York, and thereby, violations of Sections 1955 and 371 of Title 18, United States Code, and a conspiracy to violate these statutes which have been and are being committed by JOSEPH DENTI, JOSEPH SARCINELLA also known as Sash, VITO DI SALVO, JOSEPH FALCO, SKIPPY Last Name Unknown (LNU), ARNIE LNU, VINCENT LANDOLFI, also known as Uncle, and others as yet unidentified.

By order of the court dated November 10, 1972, the Honorable MURRAY I. GURFEIN, United States District Judge, Southern District of New York, authorized the interception of wire communications on the following telephone number: (212) 365-1922.

By order of the court dated November 30, 1972, the Honorable CONSTANCE BAKER MOTLEY, United States District Judge, Southern District of New York, authorized the interception of wire communications on the following telephone numbers: (212) 584-2992, (212) 733-5195 and (212) 364-5627.

By order of the court dated December 8, 1972, the Honorable MURRAY I. GURFEIN, United States District Judge, Southern District of New York, authorized an extension on the original interception of wire communications on the following telephone number: (212) 365-1922.

By order of the court dated December 27, 1972, the Honorable ROBERT L. CARTER, United States District Judge, Southern District of New York, authorized the original interception of wire communications on the following telephone number: (212) 584-4399.

3. I have supervised the conduct of the investigation of this offense and as a result of my present participation in this investigation and of reports made to me by agents under my direction, I am familiar with all the circumstances of the offense. On the basis of this familiarity I allege that the facts contained in the numbered paragraphs below to show that:

a. There is probable cause for belief that JOSEPH DENTI, JOSEPH SARCINELLA also known as Sash, VITO DI SALVO, JOSEPH FALCO, SKIPPY LNU, ARNIE LNU, VINCENT LANDOLFI, also known as Uncle, and others as yet unknown, have been and are now committing an offense involving the use of telephone and oral communications with the intent to carry on the offense of bookmaking on horse racing, policy and sporting events, betting in violation of the New York State Penal Laws, Sections 225.10 and 225.40 and also thereby in violation of Sections 1955 and 371 of Title 18, United States Code.

b. There is probable cause for belief that wire communications concerning these offenses will be obtained through continued interception of wire communications emanating from telephone number (212) 584-4399, located at 660 Crescent Avenue, Bronx, New York and from telephone number (212) 226-8904, located at 80 Thompson Street, New York, New York, and oral communications emanating from Al's Espresso, 663 Crescent Avenue, Bronx, New York, and Cafe Espresso, 2339 Arthur Avenue, Bronx, New York, authorization for which is herein applied for:

c. Normal investigative procedures have been tried and reasonably appear unlikely to succeed if tried further. No

previous applications are known to have been made to any judge for authorization to intercept or for approval of interception of wire or oral communication involving any of the persons, facilities or places specified herein; except as enumerated in section 2 above and 3 below.

4. On December 4, 1972, New York Telephone Company records were reviewed by Special Agent FRANK J. MEYERS and reflected that telephone number (212) 584-4799 is subscribed to by ROSE F. CHIANESE, 660 Crescent Avenue, Bronx, New York.

On December 28, 1972, New York Telephone Company records were reviewed by Special Agent FRANK J. MEYERS and reflected that telephone number (212) 226-8904 is subscribed to by WILLIAM MARINELLI, 80 Thompson Street, New York, New York.

On December 4, 1972, records of the Consolidated Edison Company, New York, New York, were reviewed by Special Agent THOMAS F. CONNELLY and reflected that there is no record of electrical service for ROSE F. CHIANESE, 660 Crescent Avenue, Bronx, New York.

On January 16, 1973, records of the Consolidated Edison Company, New York, New York, were reviewed by Special Agent THOMAS F. CONNELLY and reflected that there is no record for WILLIAM MARINELLI, 80 Thompson Street, New York, New York.

On January 12, 1973, the files of the Credit Bureau of Greater New York were reviewed by Special Clerk THOMAS P. JUDGE on ROSE F. CHIANESE and WILLIAM MARINELLI and met with negative results.

On January 12, 1973, the files of the New York City Police Department were reviewed by Special Agent AUGUST J. MICEK on ROSE F. CHIANESE and WILLIAM MARINELLI and met with negative results.

5. I re-allege that the facts contained in my affidavits, sworn to on November 10, 1972, are true and correct. On November 10, 1972, United States District Judge MURRAY I. GURFEIN authorized

the Federal Bureau of Investigation to intercept wire communications of JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, NICHOLAS LONGO, NUNZIO GRIECO, ARMANDO COZZA, SOL BIEBER, also known as Percy, and others as yet unidentified from the telephone number (212) 365-1922 located at 2328 Hughes Avenue, Bronx, New York.

a. I re-allege that the facts contained in my affidavit sworn to on November 30, 1972, are true and correct. On November 30, 1972, United States District Judge CONSTANCE BAKER MOTLEY authorized the Federal Bureau of Investigation to intercept wire communications of JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, NICHOLAS LONGO, NUNZIO GRIECO, JOSEPH FALCO, and others as yet unidentified from telephone numbers (212) 584-2992 located at 2423 Belmont Avenue, Bronx, New York, (212) 364-5827 and (212) 733-5195 located at 2328 Hughes Avenue, Bronx, New York.

b. I re-allege that the facts contained in my affidavit sworn to on December 8, 1972 are true and correct. On December 8, 1972, United States District Judge MURRAY I. GURFEIN authorized the Federal Bureau of Investigation to intercept wire communications of JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, NICHOLAS LONGO, NUNZIO GRIECO, JOSEPH FALCO, and others as yet unidentified from telephone number (212) 365-1922.

c. I re-allege that the facts contained in my affidavit, sworn to on December 27, 1972, are true and correct. On December 27, 1972, United States District Judge ROBERT L. CARTER authorized the Federal Bureau of Investigation to intercept wire communications of JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, VITO DI SALVO, FRANK FORMOSA, JOSEPH FALCO, SKIPPY LNU, and others as yet unidentified from telephone number (212) 584-4399.

6. The Federal Bureau of Investigation was authorized to intercept such wire communications relating to the commission of the offenses of bookmaking on horse races and sports events in violation of Article 225, Section 225.10 and 225.40, New York

State Penal Law, and thereby in violation of Sections 1955 and 371 of Title 18, United States Code.

7. Hereafter, unless specified otherwise, all addresses are avenues in Bronx, New York, and all the telephones without an area code prefix are in the (212) area.

8. All information related by the informant in this affidavit has been related verbally to Special Agents of the Federal Bureau of Investigation on the dates prefacing the information supplied, and the said information thereafter was communicated to affiant by these Special Agents verbally, or by written reports.

9. The facts for this application are derived from one informant source, a confidential informant hereinafter referred to as Mr. A. Additionally, this affidavit reflects investigations and observations of Special Agents of the Federal Bureau of Investigation.

10. Mr. A has furnished information since December 8, 1970, at least once a month, to a Special Agent of the New York Office of the Federal Bureau of Investigation concerning gambling activities, hijacking and narcotics, which has proved in each instance to be accurate. Mr. A's data has resulted in the arrest and/or summonses of five persons and their subsequent convictions in hijacking; has identified and located five complete and different illegal gambling operations in Bronx, New York, and has provided information regarding two narcotic operations in the New York area. Mr. A has furnished reliable information in the past regarding gambling and other matters and his information in this case has been corroborated by independent investigation. Information supplied by Mr. A has never been found to be untruthful. Mr. A furnished the information contained in the following subparagraphs to another Special Agent, who, in turn, advised the affiant.

11. The following information was given by Mr. A:

a. On January 16, 1973, Mr. A was advised by JOSEPH SARCINELLA that JOSEPH DENTI continues to operate a large horse and sports operation which is currently being operated by DENTI, JOSEPH FALCO, SKIPPY and ARNIE from telephone numbers 365-1922, 364-5827 and 733-5195 at 2328 Hughes Avenue, Apartment 17, Bronx, New York, between the hours of 11:00 A.M. - 1:30 P.M. and 5:00 P.M. - 7:30 P.M. These numbers are being used for sports, numbers and horse racing action.

On November 10, 1972, Honorable MURRAY I. GURFEIN, United States District Judge, Southern District of New York, signed an order authorizing the interception of wire communications of JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, NICHOLAS LONGO, NUNZIO GRIECO, ARMANDO COZZA, SOL BIEBER also known as Percy and others as yet unidentified from 365-1922. A copy of said order and supporting papers are annexed hereto and incorporated by reference herein.

On January 16, 1973, Mr. A was advised by JOSEPH SARCINELLA that he is operating from 660 Crescent Avenue, Bronx, New York, and is currently using telephone 584-4399.

On January 16, 1973, Mr. A was advised by JOSEPH SARCINELLA that VITO DI SALVO continues to operate as a bagman (pay and collect) for the JOE DENTI gambling operation.

On January 16, 1973, Mr. A was advised by JOSEPH SARCINELLA that JOSEPH DENTI, JOSEPH FALCO, SKIPPY and ARNIE are currently operating their wiseroom using telephone numbers 365-1922, 364-5827 and 733-5195 located at 2328 Hughes Avenue, Bronx, New York. Mr. A further stated that JOSEPH SARCINELLA, whom he knows through personal contact is a partner with JOE DENTI, advised him all forms of betting are taken, including round robins, wheels, boxes, parlays and reverse bets.

On November 30, 1972, Honorable CONSTANCE BAKER MOTLEY, United States District Judge, Southern District of New York, signed an order authorizing the interception of wire communications of JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, NICHOLAS LONGO, NUNZIO GRIECO, JOSEPH FALCO and others

as yet unidentified from 584-2992, 364-5827 and 733-5195. A copy of said order and supporting papers are annexed hereto and incorporated by reference herein.

On December 8, 1972, Honorable MURRAY I. GURFEIN, United States District Judge, Southern District of New York, signed an order authorizing the interception of wire communications of JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, NICHOLAS LONGO, NUNZIO GRIECO, JOSEPH FALCO and others as yet unidentified from 365-1922. A copy of said order and supporting papers are annexed hereto and incorporated by reference herein.

On December 27, 1972, Honorable ROBERT L. CARTER, United States District Judge, Southern District of New York, signed an order authorizing the interception of wire communications of JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, VITO DI SALVO, FRANK FORMOSA, JOSEPH FALCO, SKIPPY LNU and others as yet unidentified from 584-4399. A copy of said order and supporting papers are annexed hereto and incorporated by reference herein.

c. On January 16, 1973, SARCINELLA advised Mr. A that number 365-1922, 364-5827 and 733-5195 currently is being used for horse and sports bets by the JOSEPH DENTI gambling operation. Mr. A further stated, as currently as January 16, 1973, that all numbers were in operation and being answered by JOE DENTI, JOSEPH FALCO, SKIPPY and ARNIE.

d. On January 16, 1973, Mr. A was advised by JOSEPH SARCINELLA that the JOE DENTI gambling operation in the Fordham area of the Bronx currently grosses fifty million dollars a year and that DENTI has several walk-in operations for sports, horses and policy betting in the Fordham area of the Bronx.

e. On January 16, 1973, Mr. A was advised by JOE SARCINELLA that Al's Espresso, 663 Crescent Avenue, Bronx, New York, is used as a walk-in betting parlor with runners of the DENTI operation dropping their work off at this location.

Mr. A also advised by SARCINELLA that Al's Espresso, 663 Crescent Avenue, and Cafe Espresso, 2339 Arthur Avenue, Bronx, New York, is used as a meeting place and settling up location for the DENTI operation.

All the above information was told by Mr. A to WILLIAM E. KELLY, a Special Agent of the Federal Bureau of Investigation in the New York Office.

12. Physical observations conducted by agents of the Federal Bureau of Investigation disclosed the following:

a. JOSEPH SARCINELLA, also known as Sash, can be found on a daily basis at 660 Crescent Avenue, Bronx New York, between 12:00 noon and 2:00 P.M. and 6:00 P.M. to 8:00 P.M. and was seen there as recently as January 15, 1973.

b. VINCENT LANDOLFI can be found on a daily basis at 80 Thompson Street, New York, New York between 12:00 noon and 2:15 P.M. and 6:30 P.M. to 8:30 P.M. and was seen there as recently as January 15, 1973.

c. On January 9, 1973, at 2:04 P.M. VINCENT LANDOLFI was observed leaving 80 Thompson Street, New York, New York and proceeding to the West Broadway Cleaners, 502 La Guardia Place, New York, New York, at approximately 2:28 P.M.

d. JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash and VITO DI SALVO can be found on a daily basis at Al's Espresso, 663 Crescent Avenue, and Cafe Espresso, 2339 Arthur Avenue, Bronx, New York, between 10:00 A.M. to 12:00 noon, 2:00 P.M. to 5:00 P.M. and 7:30 P.M. to 8:30 P.M. and all were seen at these locations as recently as January 15, 1973.

e. The means exist for establishing physical surveillance during the requested period for conducting electronic surveillance in Al's Espresso and Cafe Espresso.

f. On January 22, 1973 Cafe Espresso, 2339 Arthur Avenue, Bronx, New York was physically observed and it was noted that the business is located on the ground floor of a five story brick building. The Cafe Espresso is a public accommodation serving refreshments; approximately 15 feet by 15 feet in dimensions.

g. On January 22, 1973 Al's Espresso, 663 Crescent Ave.; Bronx, New York was physically observed and it was noted that Al's Espresso is located on one-third of the ground floor of a six story brick building. Al's Espresso is a public accommodation serving refreshments. The interior dimensions are 18 feet by 10 feet on the east end, sloping to 6 feet on the west end.

13. From listening to the intercepted gambling conversations since the date of the aforesaid orders, it now has been ascertained that a code is being used for the purpose of laying off and making bets.

I have reviewed the logs of the interceptions made under the authority of Judge Carter's order of December 27, 1972, and from this review believe that the telephones are being used for the purpose of carrying on the offense of bookmaking on horses, and sports betting.

14. An analysis of the interceptions to date, as taken from the telephone logs, has revealed the following pertinent information:

a. On December 27, 1972, at 6:41 P.M. an outgoing call from telephone number 584-4399 to telephone number 226-8904; whereby, JOE SARCINELLA called "Uncle and discussed changes in the line.

b. On December 28, 1972, at 6:16 P.M. an outgoing call from telephone number 584-4399 to telephone number 226-8904; whereby, JOE SARCINELLA gives "Uncle" the line.

c. On January 2, 1973 at 7:10 P.M. an outgoing call from telephone number 584-4399 to telephone number 226-8904; whereby, JOE SARCINELLA discusses a layoff with "Uncle".

d. On January 3, 1973, an incoming call was received at 7:40 P.M. from "Uncle" to JOE SARCINELLA; whereby, "Uncle" gives SARCINELLA \$2,000.00 to layoff.

e. On January 9, 1973, at 6:14 P.M. an outgoing call from telephone number 584-4399 to telephone number 226-8904; whereby, SARCINELLA gives "Uncle" the line.

f. On January 9, 1973, an incoming call was received at 6:17 P.M. from DUKE LNU to JOE SARCINELLA; whereby, DUKE LNU gives SARCINELLA his code (TONY for AUNTIE) and tells SARCINELLA to call 226-8904 to layoff.

15. The records of the New York City Police Department, Bureau of Criminal Identification, were reviewed by Special Agent AUGUST J. MICEK on November 18, 1971, and indicated that JOSEPH DENTI has been arrested on twenty occasions on gambling charges, the most recent of which was on April 24, 1972, in Manhattan, New York. JOSEPH DENTI was convicted on two of the above occasions.

a. The records of the New York City Police Department, Bureau of Criminal Identification, were reviewed by Special Agent AUGUST J. MICEK on May 17, 1972 and indicated that JOSEPH SARCINELLA, also known as Sash has been arrested on fourteen occasions between 1961 and 1972 by the New York City Police Department on gambling charges; the most recent of which was on April 24, 1972, in Manhattan, New York. JOSEPH SARCINELLA was convicted on none of the above occasions.

b. The records of the New York City Police Department, Bureau of Criminal Identification, were reviewed by Special Agent August J. Micek on December 8, 1972 and indicated that VITO DI SALVO has been arrested on seven occasions between 1968 and 1971 by the New York City Police Department on gambling charges, the most recent of which was on March 26, 1971, in Bronx, New York. VITO DI SALVO was convicted on one of the above occasions.

c. The records of the New York City Police Department, Bureau of Criminal Identification, were reviewed by Special Agent August J. Micek on January 11, 1973, and indicated that VINCENT LANDOLFI has been arrested on twelve occasions on gambling charges, the most recent of which was April 20, 1972, in Manhattan, New York. VINCENT LANDOLFI

was convicted on five of the above occasions.

16. I know that most bookmaking operations dealing in sports and horse race gambling accept bets primarily on the telephone, many times assigning code names for the bettors making the wagers and the bookmakers accepting them. The only required personal contact between the bettor and bookmaker in these instances is when they "settle up", that is, when they balance their account and any money owed at that time by one or the other is paid. These bets are recorded by the bookmaker accepting them on the telephone on a separate "sheet" for each runner, who settles with the bettor.

NEED FOR INTERCEPTION

17. Physical surveillance of the premises at 660 Crescent Avenue, 583 Courtland Avenue, 2339 Arthur Avenue, 663 Crescent Avenue, Bronx, New York, 80 Thompson Street, New York, New York, offers scant likelihood of obtaining evidence of this illegal gambling business, being conducted chiefly over the telephone and at specific meeting places.

18. My experience and the experience of other agents has shown that gambling raids and searches of gamblers and their gambling establishments, have not, in the past, resulted in the gathering of physical or other evidence to prove all elements of the offenses. I have found through my experience and the experience of other Special Agents who have worked on gambling cases that gamblers frequently do not keep permanent records. If such records have been maintained, gamblers immediately, prior to or during a physical search, destroy them. Additionally, records that have been seized in past gambling cases have generally not been sufficient to establish elements of a federal offense because such records are difficult to interpret and many times are of little or no significance without further knowledge of the gamblers' activities and nature of the operation.

a. The informant referred to in this affidavit is unwilling to testify against JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, VITO DI SALVO, VINCENT LANDOLFI, also known as Uncle, JOSEPH FALCO, SKIPPY LNU, ARNIE LNU and others as yet unidentified, involved in the gambling business because of fear for his personal safety.

19. For the reasons enumerated above, all normal avenues of investigation and prosecution have been exhausted or have been considered too risky to attempt. The only reasonable and possible investigative procedure remaining which can furnish the required quantum of evidence sufficient to prove beyond a reasonable doubt that JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, VITO DI SALVO, VINCENT LANDOLFI, also known as Uncle, JOSEPH FALCO, SKIPPY LNU, ARNIE LNU and others as yet unidentified are conducting, financing, managing, supervising, directing, or owning all or part of an illegal gambling business in violation of Title 18, United States Code, Sections 371 and 1955; is to intercept wire communications to and from telephones numbered (212) 584-4399, (212) 226-8904, and oral communications emanating from Al's Espresso and Cafe Espresso.

Inasmuch as the gambling operation described herein is a continuing criminal conspiracy, the evidence sought through the interception of wire communications to and from telephones numbered (212) 584-4399, (212) 226-8904, and oral communications emanating from Al's Espresso and Cafe Espresso, will be obtained on a continuing basis on several days succeeding the first receipt of communications which is the objective of this request. Therefore, it is requested that these intercepts not terminate when the sought for communications are first obtained, but continue until interception reveals the identities of the confederates of JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, VITO DI SALVO, VINCENT LANDOLFI, also known as Uncle,

JOSEPH FALCO, SKIPPY

LNU, ARNIE LNU and others as yet unidentified, their places of operation, and the nature of the conspiracy involved therein, or for a period of fifteen days from the date of the order, whichever is earlier.

WHEREFORE, I submit that the information supplied by the reliable informant, as corroborated by information obtained from the New York Telephone Company and also by investigations of Special Agents of the Federal Bureau of Investigation, as set forth in preceding paragraphs, provides sufficient facts to establish probable cause that JOSEPH DENTI, JOSEPH SARCINELLA, also known as Sash, VITO DI SALVO, VINCENT LANDOLFI, also known as Uncle, JOSEPH FALCO, SKIPPY LNU, ARNIE LNU and others as yet unidentified have been and are committing an offense involving the use of the telephones numbered (212) 584-4399, 660 Crescent Avenue, Bronx, New York, (212) 226-8904, 80 Thompson Street, New York, New York, and oral communications emanating from Al's Espresso, 663 Crescent Avenue, and Cafe Espresso, 2339 Arthur Avenue, Bronx, New York, which is an integral part of a gambling operation in violation of Article 225, Sections 225.10 through 225.40 of the New York Penal Law and also thereby in violation of Sections 371 and 1955 of Title 18, United States Code. Section 803 of Title VIII, entitled "Syndicated Gambling of the Organized Crime Control Act of 1970", Public Law 91-452, 91st Congress, approved October 15, 1970, amended Chapter 95, Title 18, United States Code, by adding a new section, Section 1955, Prohibition of Illegal Gambling Business. Section 801 of Title VIII of the Act contains a special finding that illegal gambling involves a widespread use of, and has an effect upon, interstate commerce and the facilities thereof.

/s/ Richard A. Nalley
RICHARD A. NALLEY

Subscribed and sworn to before

me this 7 day of February, 1973.

/s/ Thelma F. Teller

336

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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APPLICATION OF THE UNITED STATES :
OF AMERICA IN THE MATTER OF AN : Misc. No. 19-97(33)
ORDER AUTHORIZING THE INTERCEP- : 5th Day Report
TION OF WIRE AND ORAL COMMUNICATIONS :
-----x

JAMES W. DOUGHERTY, Special Attorney, United States
Department of Justice, being duly sworn, states:

1. I am a Special Attorney of the United States
Department of Justice, assigned to the Southern District of
New York. This matter has been assigned to me by Edward M.
Shaw, Special Attorney, United States Department of Justice,
with whom I have discussed the facts contained herein. This
report is submitted pursuant to the order signed by the
Honorable Harold R. Tyler, Jr., on February 7, 1973, directing
your deponent to file a report on the fifth and tenth day
following the date of the order authorizing the wire and oral
interceptions, advising the Court as to what progress has been
made toward achievement of the authorized objectives and the
need for continued interception. The Court authorized the con-
tinued interception of wire communications over telephone bear-
ing number (212) 584-4399, initiation of interception of wire
communications over telephone bearing number (212) 226-8904,
and the interception of oral communications emanating from
Al's Espresso, 663 Crescent Avenue, Bronx, New York and Cafe
Espresso, 2339 Arthur Avenue, Bronx, New York. This report
covers the dated February 7 to February 11, 1973, inclusive.

2. The following data was obtained through wire
surveillance of telephone communications over telephone bear-
ing number (212) 584-4399:

(a) On Wednesday, February 7, 1973, forty-three (43) betting calls were intercepted, totalling \$19.00 in player-bets and \$5,500.00 in lay-off bets.

(b) On Thursday, February 8, 1973, forty-seven (47) betting calls were intercepted, totalling \$3,500.00 in player-bets and \$7,000 in lay-off bets.

(c) On Friday, February 9, 1973, fifty-four (54) betting calls were intercepted, totalling \$3,560.00 in player-bets and \$1,000.00 in lay-off bets.

(d) On Saturday, February 10, 1973, fifty-five (55) betting calls were intercepted, totalling \$1,767.00 in player-bets and \$10,000 in lay-off bets.

(e) On Sunday, February 11, 1973, forty-four (44) betting calls were intercepted, totalling \$4,800.00 in player-bets and no lay-off bets.

3. The following data was obtained through wire surveillance of telephone communications over telephone bearing number (212) 226-8904:

(a) On Wednesday, February 7, 1973, due to telephone service failure not related to the instant surveillance, only two (2) calls were intercepted, with no amounts wagered.

(b) On Thursday, February 8, 1973, thirteen (13) betting calls were intercepted, totalling \$440.00 in player-bets. No lay-off bets were recorded.

(c) On Friday, February 9, 1973, eighteen (18) betting calls were intercepted, totalling \$1,555.00 in player-bets. No lay-off bets were recorded.

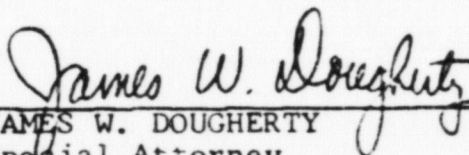
(d) On Saturday, February 10, 1973, thirty-eight (38) betting calls were intercepted, totalling \$7,450.00 in player-bets. No lay-off bets were recorded.

(e) On Sunday, February 11, 1973, twenty-two (22) betting calls were intercepted, totalling \$1,390.00 in player-bets. No lay-off bets were recorded.

3. Of the remaining calls on each date indicated, all but a few related to line and pay and collect information relating to the gambling business.

4. Due to technical difficulties encountered in the installation of the eavesdropping devices, no oral communications were intercepted from Al's Espresso or Cafe Espresso during the relevant period.

5. The information contained herein is accurate to the best of my knowledge. It is derived from reports made to me by Special Agent Richard Nalley of the Federal Bureau of Investigation.


JAMES W. DOUGHERTY
Special Attorney
U.S. Department of Justice

Subscribed and Sworn to before me
this day of , 1972.

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IN THE MATTER OF THE APPLICATION :
OF THE UNITED STATES FOR AN ORDER : ' Misc. No. M19-97(33)
AUTHORIZING THE INTERCEPTION OF :
WIRE AND ORAL COMMUNICATIONS :
-----x

ORDER

A motion having been made, and having read the affidavit of James W. Dougherty in support thereof, I find that:

There is good cause for postponing the serving of an inventory on Joseph Denti and other parties to wire and oral communications intercepted pursuant to this Court's Order of February 7, 1973.

THEREFORE, IT IS ORDERED that the inventory required by Title 18, United States Code, Section 2518(8)(d) is hereby postponed for ninety (90) days from the date of this Order, or for a period of ninety (90) days from the date that Joseph Denti and his co-conspirators are arrested, whichever occurs earlier, subject to the further order of this Court.

UNITED STATES DISTRICT JUDGE

Entered

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IN THE MATTER OF THE APPLICATION :
OF THE UNITED STATES FOR AN ORDER : Misc. No. M19-97(33)
AUTHORIZING THE INTERCEPTIONS OF :
WIRE AND ORAL COMMUNICATIONS :
-----x

MOTION FOR A PROTECTIVE ORDER

Pursuant to the provisions of Title 18, United States Code, Section 2518(8)(d), the United States requests that the inventory required by Title 18, United States Code, Section 2518(8)(d) be postponed for a period of ninety (90) days from the date of this motion.

In support of this motion, and as good cause therefor, the annexed affidavit of James W. Dougherty is submitted.

JAMES W. DOUGHERTY
Special Attorney
Organized Crime Strike Force
U. S. Department of Justice

JMF:jwn

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IN THE MATTER OF THE APPLICATION :
OF THE UNITED STATES FOR AN ORDER : Misc. No. M19-97(33)
AUTHORIZING THE INTERCEPTION OF :
WIRE AND ORAL COMMUNICATIONS :
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AFFIDAVIT

JAMES W. DOUGHERTY, Special Attorney, Organized
Crime and Racketeering Section, Criminal Division, United
States Department of Justice, being duly sworn, states:

1. This Court, by its Order of February 7, 1973,
authorized interceptions of wire communications to and from
telephones numbered (212) 584-4399 located at 660 Crescent
Avenue, Bronx, New York and (212) 226-8904, located at 80
Thompson Street, New York, New York, and the interception
of oral communications from Al's Espresso, 663 Crescent
Avenue and Cafe Espresso, 2339 Arthur Avenue, both addresses
located in Bronx, New York, being utilized by Joseph Denti
and others, for a period of fifteen (15) days.

2. Pursuant to said Order, interceptions commenced
on February 7, 1973, on telephone numbers (212) 584-4399 and
(212) 226-8904. Interceptions were terminated on February
20, 1973.

3. Interception of oral communications was initiated
on February 15, 1973, at 5:00 a.m., at Al's Espresso. Sur-
veillance terminated on February 20, 1973. No oral intercep-
tions occurred at Cafe Espresso during the relevant period.

4. The investigation, of which interceptions of wire
and oral communications of Joseph Denti pursuant to the Court's

Order of February 7, 1973 were a part. involves numerous other persons in several other locations other than those referred to above.

5. On March 7 and April 13, 1973, additional orders authorizing interceptions of wire and oral communications have been granted and communications have been intercepted in other locations, which were based on the interceptions made of Joseph Denti and others pursuant to the Court's Order of February 7, 1973.

6. At this stage of the investigation, it is apparent that a gambling conspiracy involving many other individuals and millions of dollars is involved. However, the complete scope of the gambling conspiracy and the identities of all the individuals involved have not been fully determined.

7. Therefore, no arrests have been made in this case, and it is not expected that any arrests will be made until the conclusion of the investigation and a complete analysis of the available evidence has been accomplished.

8. For the reasons set forth in the preceding paragraphs, an inventory, necessitating notification to Joseph Denti and any other parties to intercepted wire and oral communications, of the entry of this Court's Order of February 7, 1973, authorizing interceptions of said wire and oral communications, would seriously jeopardize the further investigation of this gambling conspiracy.

WHEREFORE, it is respectfully requested that this Court, pursuant to Title 18, United States Code, Section 2518(8)(d), issue an Order postponing the serving of an inventory, required by Title 18, United States Code, Section 2518(8)(d), for a period of ninety (90) days from the date of said Order.

JAMES W. DOUGHERTY
Special Attorney
U. S. Department of Justice

Subscribed and Sworn to before
me this day of , 1973.

JWD:jwn

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IN THE MATTER OF THE APPLICATION OF THE :
UNITED STATES FOR AN ORDER AUTHORIZING :
THE INTERCEPTION OF WIRE COMMUNICATIONS :
AT (212)-226-8904 and (212) 534-4399, : ORDER
AND OF ORAL COMMUNICATIONS AT AL'S : MISC. NO. 19-97 (33)
EXPRESSO, 563 CRESCENT AVENUE, AND :
CAFE EXPRESSO, 2339 ARTHUR AVENUE, :
BRONX, NEW YORK. :
-----X

Application having been made before this Court by Edward M. Shaw, Special Attorney, United States Department of Justice, for an order directing that all original tape recordings made pursuant to an order of this Court dated February 7, 1973 be maintained in a sealed condition in the custody of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, and this Court having been satisfied by the annexed affidavits of the said Edward M. Shaw and Special Agent Richard A. Walley that the original tape recordings of all conversations made pursuant to the said order of this Court have been maintained in a sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, from a point in time no later than immediately following the expiration date of the said order until the present, and that said tape recordings are available to this Court, it is hereby

ORDERED that all original tape recordings which were made pursuant to said order of this Court and maintained by the Federal Bureau of Investigation in a sealed condition at 201 East 69th Street, New York, New York, be maintained in the same sealed condition by the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, until further Order of this Court or other court of competent jurisdiction should direct their removal or unsealing.

W. J. S.

UNITED STATES DISTRICT COURT

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS AT (212) 266-8004 and (212) 534-4399, AND OF ORAL COMMUNICATIONS AT AL'S EXPRESSO, 663 CRESCENT AVENUE, AND CAFE EXPRESSO, 2339 ARTHUR AVENUE BRONX, NEW YORK.

AFFIDAVIT

MISC. NO. 19-97 (33)

Richard A. Halley, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation and since January of 1972, I have been supervising an investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York being operated in violation of Title 18, United States Code, Section 1955.

2. During the course of this investigation a series of orders authorizing electronic interception and eavesdropping were obtained and the applications for these orders were supported by my affidavits.

3. In particular an order of this Court (the "surveillance order") was obtained on February 7, 1973 authorizing the above-captioned interception. I supervised the operation of this interception. All procedures followed were done at my direction.

4. At my direction, the following procedures were followed with respect to the sealing and custody of tape recordings made under the said surveillance order: at the time that each original tape reel was completed, as the surveillance progressed, the reel (a) was placed in a box, (b) sealed with evidence tape, (c) dated and initialed by the FBI agent who was manning the recordings and who boxed the reel and applied the seal and (d) turned over to me with a "chain of custody" form attached indicating

prior to delivery to me.

5. Upon receipt of each sealed box containing the original tape reel and the "chain of custody" form, I immediately thereafter placed them in a locked steel container at the offices of the Federal Bureau of Investigation at 201 East 69th Street, New York, New York, to which only I have access.

6. The seals on these boxes of tape reels have not been removed or altered in any way since the time of sealing as described above, and the sealed boxes have never been removed from the locked steel container from the time that I placed them therein. All of the sealed boxes are available to this Court.

7. These procedures have completely protected the original recordings from editing or other alterations.

RICHARD A. HALLEY
Special Agent
Federal Bureau of Investigation

Sworn to before me this

day of

1974.

:pa

4. The surveillance order was one of a series of nine surveillance orders and extensions thereof entered by Judges of this Court and of the United States District Court for the Eastern District of New York in connection with a investigation of a single integrated sports and horse betting operation in the Southern and Eastern Districts of New York, being operated in violation of Title 18, United States Code, Section 1955. The last such order expired on or about July 30, 1973.

5. No arrest or indictment has as yet resulted from any of the evidence accumulated under the surveillance order or any of the related surveillance orders referred to above.

6. As indicated in the attached affidavit of Special Agent Richard Walley of the Federal Bureau of Investigation, the Agent in charge of this entire investigation, an FBI Agent acting under Agent Walley's direction sealed each original tape recording made under the surveillance order in a box with evidence tape and signed and dated the seal, as soon as each such tape recording was made during the authorized surveillance period. As further indicated in Agent Walley's affidavit, each such sealed box was then surrendered to Agent Walley, with a completed "chain of custody" form, and was locked in a container to which only Agent Walley has access, and has not thereafter been unsealed or removed at any time.

7. I did not specifically instruct James Dougherty, the Special Attorney on my staff to whom this investigation was assigned, to obtain a court order directing the sealing of the tape recordings under the surveillance order "immediately upon the expiration of the period of the order or extension thereof" as provided under Title 18, United States Code, Section 2513 (8)(a). Mr. Dougherty left this office in June, 1973. I and the Attorney on my staff to whom I reassigned this investigation in June, 1973, at the time of Mr. Dougherty's departure, first became aware on

January 3, 1974, that no such order has been obtained to date.

8. As indicated above, the procedure for prompt sealing by the Federal Bureau of Investigation was even stricter than that required under Section 2518 (3)(a), since each tape was sealed as soon as a recording was made on it, and thus all tapes were sealed even prior to the expiration of the period of the surveillance order.

9. As indicated in Agent Nalley's affidavit, all of the sealed tapes under the surveillance order are available to this Court.

10. In view of these facts, I respectfully request that this Court at this time enter an order directing the continued maintenance of the original tape recordings, in the sealed condition described in Agent Nalley's affidavit, at the Federal Bureau of Investigation.

WHEREFORE, the Government respectfully requests that this Court enter an order in the form attached hereto.

EDWARD M. SHAW
Special Attorney
United States Department of
Justice

Sworn to before me this

day of

1974.

United States District Court
FOR THE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

VS.

The Premises known as the ROSEWOOD
LUNCHEONETTE, located at 3263
White Plains Road, Bronx, New York

Docket No.

Case No.

SEARCH WARRANT

To ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION

Affidavit(s) having been made before me by Julius J. Bonavolonta

that he has reason to believe that ~~XXXXXX~~
on the premises known as

THE ROSEWOOD LUNCHEONETTE
located at 3263 White Plains Road,
Bronx, New York

in the Southern District of

there is now being concealed certain property, namely records of an illegal gambling business, papers, lists, slips and devices utilized to ~~XXXXXX~~ and compute wagers and monies owed to and by bettors in the illegal gambling business; records, papers, lists, slips, and devices utilized to identify participants in the illegal gambling business; United States currency, telephone lines and instruments, and other gambling paraphernalia used in and deriving from the furtherance of the illegal gambling business, which is being conducted in violation of Title 18, United States Code, Section 1955,

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of ten days
(not to exceed 10 days; the person or place named for the property specified, serving this warrant and making the search ~~XXXXXX~~ in the daytime (6:00 a.m. to 10:00 p.m.)) and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before as required by law.

Federal judge or magistrate

Dated this _____ day of _____, 19____

JULIUS J. BONAVOLONTA

Judge (Federal or State Court of Record) or Federal Magistrate.

*The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes it: 'execution at times other than daytime.' (Rule 41(c)). A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized 'at any time day or night' pursuant to Rule 41(c)."

RETURN

RAW 352
HEANEY

I received the attached search warrant OCTOBER 12, 1974, and have executed it as follows:

On OCTOBER 13, 1974 at 2:05 o'clock PM, I searched the person or premises described in the warrant and

I left a copy of the warrant with FRANK CARUSO
name of person searched or owner or "at the place of search"
together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: Taken from Back Room

1. Miscellaneous envelopes and paper, pads with written notations
2. One Telephone
3. One Bulletin Board containing various slips of paper
4. One mechanical device

Taken from Front Room:

1. One envelope containing photograph and negative

This inventory was made in the presence of SA Edward L. Lohr (front room)
and SA Charles Reid Queener

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

HEANEY

Subscribed and sworn to and returned before me this _____ day of _____, 19____.

Federal Magistrate

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

Docket No.

Case No.

The Premises Known as MIKE's
EXPRESSO, located on the Ground
Floor At 3607 Bronxwood Avenue,
Bronx, New York

SEARCH WARRANT

To ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION

Affidavit(s) having been made before me by Julius J. Bonavolonta

that he has reason to believe that { ~~XXXXXXXXXXXXXXXXXXXX~~
on the premises known as }

MIKE's EXPRESSO, Located on The
Ground Floor At 3607 Bronxwood Avenue
Bronx, New York

in the Southern District of New York

there is now being concealed certain property, namely records of an illegal gambling business, papers, lists, slips and devices utilized to accept, record and compute wagers and monies owed to and by bettors in the illegal gambling business; records, papers, lists, slips, and devices utilized to identify participants in the illegal gambling business; United States currency, telephone lines and instruments, and other gambling paraphernalia used in and deriving from the furtherance of the illegal gambling business, which is being conducted in violation of Title 18, United States Code, Section 1955,

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of Ten days
(not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found
there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before
as required by law.

Federal Judge or magistrate

Dated this day of , 19

Judge (Federal or State Court of Record) or Federal Magistrate

*The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c)). A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

EXPRESSO

RETURN

BEST COPY AVAILABLE

354

I received the attached search warrant *Oct. 12*, 19 *74*, and have executed it as follows:

On *October 13*, 19 *74* at *10:00* o'clock *AM*, I searched the person or premises described in the warrant and

I left a copy of the warrant with *MICHAEL D. TURI*
name of person searched or owner or "at the place of search"
together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- One telephone number 312-547-5607.*
- One light stick or flashlight type item.*
- One keyring*
- Numerous slips of paper, pads, loose sheets, and notepaper with numerical and written notations*

This inventory was made in the presence of *FRANCIS W. HEANEY, JR.*

and

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

QUENNER

Subscribed and sworn to and returned before me this _____ day of _____, 19 _____.

Federal Magistrate

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

VS.

The Premises Known as LEO FARANDA
 GROCERIES, INC. Located at 3601
 Barnes Avenue, Bronx, New York

Docket No. 74

Case No. 1265

CRIG.
 SEARCH WARRANT

To ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION

Affidavit(s) having been made before me by Julius J. Bonavolonta

that he has reason to believe that { ~~on the person of~~
 on the premises known as }

LEO FARANDA GROCERIES, INC.
 Located At 3601 Barnes Avenue,
 Bronx, New York

in the Southern District of New York

there is now being concealed certain property, namely records of an illegal gambling business, papers, lists, slips and devices utilized to accept, record and compute wagers and monies owed to and by bettors in the illegal gambling business; records, papers, lists, slips, and devices utilized to identify participants in the illegal gambling business; United States currency, telephone lines and instruments, and other gambling paraphernalia used in and deriving from the furtherance of the illegal gambling business, which is being conducted in Violation of Title 18, United States Code, Section 1955,

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

Ten days

You are hereby commanded to search within a period of _____
 (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before _____ as required by law.

Federal Judge or Magistrate

Dated this 12 day of Oct

1974

Matthew A. Turchi U.S.D.J.
 Judge (Federal or State Court of Record) or Federal Magistrate.

"The Federal Rules of Criminal Procedure provide: 'The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime.' (Rule 41(c)). A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized 'at any time day or night' pursuant to Rule 41(c)." 355

RETURN

I received the attached search warrant October 13, 1974, and have executed it as follows:

On October 13, 1974 at 11:30 o'clock A.M., I searched the person or premises described in the warrant and

I left a copy of the warrant with Leo Faranda
name of person searched or owner or "at the place of search"
 together with a receipt for the items seized, a copy of which is annexed hereto.

The following is an inventory of property taken pursuant to the warrant:
 1 telephone instrument #212-798-5522; 1 telephone instrument #212-231-0472; 1 Victor adding machine #1296-935C; 4 Vernon Royal Steno tablets, blue, with various notations; numerous slips of paper with numerical and letter notations; The foregoing items were seized from the rear room of the premises. From the front part of the premises the following were seized: Six ten-dollar bills with two accompanying slips of paper with numerical notations.

This inventory was made in the presence of

and

I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this _____ day of _____, 19____.

Federal Magistrate

United States District Court
FOR THE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

VS.

For The Person Of FRANK CARUSO

Docket No.

Case No.

SEARCH WARRANT

To ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION

Affidavit(s) having been made before me by Julius J. Bonavolonta

that he has reason to believe that { on the person of
~~XXXXXX~~ }
~~XXXXXX~~

FRANK CARUSO

in the Southern District of New York

there is now being concealed certain property, namely records of an illegal gambling business, papers, lists, and slips utilized to accept, record, and compute wagers, and monies owed to and by bettors in the illegal gambling business; records, papers, lists, and slips utilized to identify participants in the illegal gambling business; United States currency, and other gambling paraphernalia used in and deriving from the furtherance of the illegal gambling business which is being conducted in violation of Title 18, United States Code, Section 1955,

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of Ten days (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before as required by law.

Federal Judge or Magistrate

Dated this day of , 19

Judge (Federal or State Court of Record) or Federal Magistrate.

The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c)). A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

RETURN

CRAUSO

358

I received the attached search warrant
follows:

10/12, 1974, and have executed it as

On 10/13, 1974 at 7:10 o'clock P M, I searched the person or premises described in the warrant and

I left a copy of the warrant with Frank Crauso
name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

\$1320.00 U.S. Currency

1. Address book

Numerous slips of paper on which appear to be written telephone numbers.

This inventory was made in the presence of

SA D. Coten Hunt
and SA Clifford H. Dyer ITL

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

CRAUSO

Subscribed and sworn to and returned before me this

day of

, 19

Federal Magistrate

United States District Court

FOR THE

UNITED STATES OF AMERICA

VS.

THE PERSON OF
ROBERT D'ADDARIO

Docket No. 74

Case No. 1270

SEARCH WARRANT

To ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION

Affidavit(s) having been made before me by Julius J. Bonavolonta

that he has reason to believe that { on the person of
~~on the premises above described~~ }

ROBERT D'ADDARIO

in the Southern District of New York

there is now being concealed certain property, namely records of an illegal gambling business, papers, lists, and slips utilized to accept, record, and compute wagers, and monies owed to and by bettors in the illegal gambling business; records, papers, lists, and slips utilized to identify participants in the illegal gambling business; United States currency, and other gambling paraphernalia used in and deriving from the furtherance of the illegal gambling business which is being conducted in violation of Title 18, United States Code, Section 1955.

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of Ten days (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before as required by law.

Federal judge or magistrate

Dated this 12 day of Oct

1974

Mady D. Jacobs U.S. Mag.

Judge (Federal or State Court of Record) or Federal Magistrate

RETURN

360

received the attached search warrant October 13, 1974, 19 , and have executed it as

follows:

On October 13, 1974 at 3:05 o'clock P M, I searched the person or premises described in the warrant and

I left a copy of the warrant with Robert D'Addario

name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: No items seized.

This inventory was made in the presence of

and

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this day of , 19 .

Federal Magistrate

DO NOT WRITE IN THESE SPACES

RECEIVED OCT 15 1974

FD-16 (Rev. 7-73)

United States District Court
FOR THE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

VS.

For the Person Of MICHAEL DITURI

Docket No.

Case No.

SEARCH WARRANT

To ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION

Affidavit(s) having been made before me by Julius J. Bonavolonta

that he has reason to believe that { on the person of
XXXXXXXXXXXXXXXXXXXXX
on the premises known as }

MICHAEL DITURI

in the Southern District of New York

there is now being concealed certain property, namely records of all illegal gambling business, papers, lists, and slips utilized to accept, record, and compute wagers, and monies owed to and by bettors in the illegal gambling business; records, papers, lists, and slips utilized to identify participants in the illegal gambling business; United States currency, and other gambling paraphernalia used in and deriving from the furtherance of the illegal gambling business which is being conducted in violation of Title 18, United States Code, Section 1955,

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

Ten days

You are hereby commanded to search within a period of _____ (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before _____ as required by law.

Federal Judge or magistrate

Dated this _____ day of _____, 19____

, 19____

I, _____, Clerk of the Court, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the files of the Court.

Judge (Federal or State Court of Record) or Federal Magistrate.

*The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c)). A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

RETURN

I received the attached search warrant October 13, 1974, and have executed it as follows:

On October 13, 1974 at 10¹⁰ o'clock A M, I searched the person or premises described in the warrant and

I left a copy of the warrant with _____

Michael Vituri

name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Cash \$ 932.00

This inventory was made in the presence of

Michael D. Turi

SA Julia Bonavolonta and SA Francis Heaney

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this _____

day of _____

, 19 _____

Federal Magistrate

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Docket No.

VS.

Case No.

For the Person Of LEO FARANDA

SEARCH WARRANT

To ANY SPECIAL AGENT OF THE FEDERAL BUREAU OF INVESTIGATION

Affidavit(s) having been made before me by Julius J. Bonavolonta

that he has reason to believe that { on the person of
XXXXXXXXXXXXXXXXXXXX
on the premises XXXXXXXX }

LEO FARANDA

in the Southern District of New York

there is now being concealed certain property, namely records of an illegal gambling business, papers, lists, and slips utilized to accept, record, and compute wagers, and monies owed to and by bettors in the illegal gambling business; records, papers, lists, and slips utilized to identify participants in the illegal gambling business; United States currency, and other gambling paraphernalia used in and deriving from the furtherance of the illegal gambling business which is being conducted in violation of Title 18, United States Code, Section 1955,

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

Ten days

You are hereby commanded to search within a period of _____ (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before _____ as required by law.

Federal judge or magistrate

Dated this _____ day of _____, 19____

Judge (Federal or State Court of Record) or Federal Magistrate

*The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c)). A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

RETURN

Akron
Faranda

I received the attached search warrant October 12, 1974, and have executed it as follows:

On October 13, 1974 at 11:30 o'clock AM, I searched the person or premises described in the warrant and

I left a copy of the warrant with

Geo. A. Farandaname of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

One business card with numbers written on the back
Two slips of lined paper with written and numerical notations

This inventory was made in the presence of SA Coffey A. Dyer
and SA Walter Smith

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

DYER

Subscribed and sworn to and returned before me this

day of

, 19

Federal Magistrate

-----X
IN THE MATTER OF AN APPLICATION FOR A :
SEARCH WARRANT TO SEARCH THE PREMISES :
KNOWN AS THE ROSEWOOD LUNCHEONETTE, :
LOCATED AT 3263 WHITE PLAINS ROAD, :
BRONX, NEW YORK; THE PREMISES KNOWN AS :
MIKE'S EXPRESSO, LOCATED AT 3607 BRONX- :
WOOD AVENUE, BRONX, NEW YORK; THE PRE- :
MISES OF LEO FARANDA'S GROCERIES, INC. :
LOCATED AT 3601 BARNES AVENUE, BRONX, :
NEW YORK, AND THE PERSONS OF FRANK :
CARUSO, ROBERT D'ADDARIO, MICHAEL DITURI, :
LEO FARANDA AND MICHAEL GAGLIANO :
-----X

AFFIDAVIT IN
SUPPORT OF AN
APPLICATION FOR
SEARCH WARRANT

Cr.

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

Oct 12

Julius J. Bonavolonta, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal

Bureau of Investigation and I make this affidavit in support of an application for a warrant authorizing the search of the premises and persons captioned above for evidence of the operation of an illegal gambling business being conducted in violation of Title 18, United States Code, Section 1955.

2. During the past four years as a Special Agent of the Federal Bureau of Investigation, I have participated in more than twenty investigations of illegal gambling businesses involving both policy and bookmaking. As a result of this experience, as well as training by the Federal Bureau of Investigation, I have become familiar with illegal gambling businesses, their methods of operation, and the records commonly used by participants in both policy and bookmaking gambling businesses.

3. Since April of 1974 the Federal Bureau of Investigation, and the New York City Police Department have been conducting a joint investigation of an illegal gambling business. I have supervised the conduct of this investigation and as a result of my own participation in this investigation and of reports made to me by agents of the Federal Bureau of Investigation and officers of the New York City Police Department under my supervision, I am familiar with all the circumstances of this investigation. On the basis of this familiarity, I allege the facts contained in the numbered paragraphs below to show that:

a. There is probable cause to believe that FRANK CARUSO, ROBERT D'ADDARIO, MICHAEL DITURI, LEO FARANDA, MICHAEL GAGLIANO, and others referred to herein, and others as yet unknown, have been and are now committing offenses involving an illegal gambling business being conducted in violation of Article 225 of the New York State Penal Law and in which five or more persons are participating, and which has been in substantially continuous operation for a period in excess of thirty (30) days, and which has a gross revenue of \$2,000 on any single day, thereby being in violation of Title 18, United States Code, Section 1955. OCT. 12 ✓

b. There is probable cause to believe that evidence of the commission of the aforesaid crimes, contraband obtained in the commission of the aforesaid crimes and property which has been used, is designed for and is intended for use in the commission of the said crimes, to wit, records of the illegal gambling enterprises, papers, slips, and devices utilized to accept, record and compute wagers and monies owed to and by bettors and other participants in the illegal gambling business; records, papers, lists, slips and devices utilized to identify participants in the illegal gambling business, United States currency, telephone lines and instruments and other gambling paraphernalia used to further the said illegal gambling business, will be found on the premises and persons captioned above.

4. From my experience as an agent of the Federal Bureau of Investigation investigating policy gambling operations, I know that a policy bet is a wager on a series of numbers placed by a gambler with a person called a "runner" or "writer". This "runner", having accepted bets from several gamblers, takes these bets to a location called a "spot" where the work product of numerous "runners" is normally collected. A "runner" may also accept wagers at a "spot". After all the bets are collected in the "spot" an individual commonly called a "pick-up man" will collect the betting slips from various "spots" and take them

to a location commonly known as a "policy bank". In many instances, in order to prevent detection by police authorities, a policy gambling enterprise will employ several "pick-up-men" to pass the policy slips, seriatim, from the "spots" to the "policy bank". At the policy bank, the accounting for the days wagers is done by trusted employees of the gambling enterprise. These persons will compute the daily receipts from each "runner" and the numbers of "hits" or wins by a gambler, and the portion of the profits to be split among "spots" and the "runners". The delivery of the gambling data takes place at the end of the normal working day, after all the wagers have been placed. In a gambling enterprises where the winning number is based upon the total amount wagered (commonly known as the total "handle") at a particular race track, all bets must be made and in the hands of trusted employees prior to the completion of the final race. Otherwise, a dishonest gambler could learn the winning number and place a bet on it. Thus, timing is an important element in the successful operation of policy gambling enterprise. Tabulations are completed at the "bank" (in gambling parlance they are called "ribbons") and are then delivered to a high-level figure in the gambling business, known as a "controller". Each day the "controller" sends the tabulations of "hits" both down to the lower level workers who ultimately make payment to the winners and up to his superiors who manage and direct the gambling business.

5. I also know from my experience that sports betting, or bookmaking, is essentially similar in its operation. The bets are placed on the outcome of a particular sporting event with odds being fixed by the managers of the gambling business at a high level. Rather than betting in person at "spots" the bettor usually places his bet in a telephone call to a "wire room". The operator of the "wire room" preliminarily tabulates the daily results, orally advises his supervisors, and then forwards

the written records or "ribbons" (as in policy betting) to a "bank" or "office". In both policy and bookmaking some participants may have dual functions; e.g. a "controller" may submit his "work" or "ribbons" directly to his manager or the operator of a "wire room" may also function as a "controller" of other "wire rooms". Also, when the illegal gambling business handles both policy and bookmaking activity any any one individual may function in more than one capacity.

SYNOPSIS OF STRUCTURE
OF ILLEGAL GAMBLING BUSINESS

6. Hereinafter, unless otherwise specified, all telephone numbers are in the (212) area as designated by the New York Telephone Company and all addresses are on streets and avenues in the County of The Bronx, State of New York. Also, all excerpted conversations are substantially verbatim but are not to be considered as exact.

7. The investigation has revealed that the premises of MIKE'S EXPRESSO, 3607 Bronxwood Avenue, is a hub of the day-to-day operation of the subject illegal gambling business. MICHAEL DITURI, ostensibly the proprietor, runs a wire room at that location and the premises are also used as a drop for gambling records by other participants in the gambling business, specifically, LEO FARANDA and FRANK BATTISTA. LEO FARANDA also operates a "wire room" at the premises of LEO FARANDA GROCERIES, INC. located at 3601 Barnes Avenue. The investigation also reveals that DITURI reports to FRANK CARUSO who is the manager of the gambling business and who is assisted by ROBERT D'ADDARIO. As a control center for the combine CARUSO and D'ADDARIO utilize the premises of the ROSEWOOD LUNCHEONETTE, located at 3263 White Plains Road, which is also regularly visited by MICHAEL GAGLIANO and other participants in the gambling enterprise whose identities are as yet unknown. The investigation further reveals that records and other property used in the operation of the gambling business are maintained by participants at the premises of both MIKE'S EXPRESSO and the ROSEWOOD LUNCHEONETTE,

and that the telephones at both locations are used in furtherance of the illegal gambling business.

FACTS SHOWING
PROBABLE CAUSE

Oct 12

THE PREMISES AND FACILITIES USED
BY THE ILLEGAL GAMBLING BUSINESS

MIKE'S EXPRESSO

8. I know from my own observations that MIKE'S EXPRESSO, at 3607 Bronxwood Avenue, Bronx, New York, is located on the ground floor of a two story building. The second story contains residential apartments. More than sixty (66) observations conducted during the months of April, May and June of 1974 reveal that the store was open from approximately 8:30 a.m. to 7:30 p.m., Monday through Saturday and from about 10:00 a.m. to about 3:00 p.m. on Sundays during that period. Though ostensibly a public eating establishment, public patronage was rarely observed. These observations also establish that MICHAEL DITURI was on the premises on a daily basis. Some of these observations were made by me and other agents of the Federal Bureau of Investigation.

9. On June 14, 1974 the records of the Permits Department of the New York City Board of Health were examined by Patricia Dennison, a clerk, upon the request of Special Agent EDWARD LAHEY. She advised that her examination of the records of the issuance of all possible licenses required to be issued to grocery stores, luncheonettes or other similar establishments, such as restaurants, revealed no record of any license having been issued to MIKE'S EXPRESSO, MICHAEL DITURI, or the premises of 3607 Bronxwood Avenue, Bronx, New York.

10. On June 18, 1974, the records of the New York Telephone Company were reviewed by Special Agent Chris Scaturro and revealed that telephone number (212) 547-8607 was listed to MIKE'S EXPRESSO at 3607 Bronxwood Avenue and was installed in the premises on March 1, 1974.

11. MICHAEL DITURI is known to the New York City Police Department under number B 466807. A record check, conducted by Special Agent AUGUST J. MICEK on April 30, 1974 indicated that DITURI had been arrested 29 times for gambling violation, most recently in September, 1971, and was convicted for five of these offenses.

Since then, in August, 1974, DITURI was arrested by Nassau County law enforcement officers for gambling violations.

THE ROSEWOOD LUNCHEONETTE

12. I know from my own observations that the ROSEWOOD LUNCHEONETTE is located in a one-story building with an entrance bearing the address of 3263 White Plains Road, Bronx, New York. The premises of the luncheonette also have a side entrance on Rosewood Avenue bearing the address of 688 Rosewood Avenue, Bronx, New York.

13. My observations of the ROSEWOOD LUNCHEONETTE reveal that the premises consist of a luncheonette area on the White Plains Road entrance and a private, partitioned area to the area of the luncheonette. A schematic drawing of the premises based upon observations from the interior by me and Police Office Joan M. Kleppel of the New York City Police Department is attached hereto and is incorporated herein as Exhibit A.

14. Investigation by Special Agent Edward Lahey, who reviewed the records of the Permit Department of the New York City Board of Health, revealed that the last annual renewal for an annually-issued restaurant permit for the ROSEWOOD LUNCHEONETTE, 3263 White Plains Road, Bronx, New York, was in 1954 (Permit No. 18189). The original permit (No. 107842) was issued to Jacob Ajermian at 3263 White Plains Road, Bronx, New York.

15. An inspection of the records of the Consolidated Edison Company, by Special Agent Frank X. Gantley reveals that the electric bill at 3263 White Plains Road, Bronx, New York (the ROSEWOOD LUNCHEONETTE) is billed to Florence Caruso and has been so billed since August, 1966.

16. A check of telephone company records by Special Agent Christopher Scaturro on July 29, 1974 reveals that telephone number (212) 231-9506 is listed to Murray Stevens Express Company at 688 Rosewood Avenue, Bronx, New York. The records also reveal that the telephone is a private line. Observations of the premises, described in paragraphs 12 and 13 hereof, reveal that there is no sign reflecting the business of Murray Stevens Express Company, nor is there any other indication of any business being conducted by an express company at the location whatsoever. There is no telephone listed to the ROSEWOOD LUNCHEONETTE.

17. During over fifty (50) surveillances conducted by Special Agent of the Federal Bureau of Investigation from July 20, 1974 to October 8, 1974, no delivery truck or other vehicles have been observed loading, unloading or parked in the immediate vicinity of 688 Rosewood Avenue, Bronx, New York. During these surveillances FRANK CARUSO and ROBERT D'ADDARIO have been observed within the premises of the luncheonette on almost a daily basis. Agents of the Federal Bureau of Investigation, who have made these observation include Walter Smith, Robert Caffrey, John Simmons, Dick Baker, Gary Skogland, Frank Heaney, Edward Lahey and Charles Queener and myself.

18. FRANK CARUSO is also known to the New York City Police Department under Number B538515 and to the Federal Bureau of Investigation under Number 587040B. A review of NYPD records by Special Agent AUGUST J. MICEK on April 30, 1974, reveals that FRANK CARUSO has been arrested 13 times for gambling offenses; most recently on March 5, 1974 in Bronx County. He was convicted on five of those charges.

19. ROBERT D'ADDARIO is known to the New York City Police Department under number B422853 and the records further reflect that he was arrested with CARUSO on June 20, 1973 by members of the New York City Police Department for gambling offenses.

LEO FARANDA GROCERIES, INC

20. The investigation reveals that LEO FARANDA GROCERIES, INC. is a business located at the premises of 3601 Barnes Avenue, New York which is operated by LEO FARANDA. The New York telephone company directories reveal that telephone number 212-798-5522 is listed to the premises.

COMMUNICATIONS BETWEEN
PARTICIPANTS IN THE ILLEGAL
GAMBLING BUSINESS

21. Pursuant to a court order issued by the Honorable Richard Owen, United States District Judge for the Southern District of New York, on August 15, 1974 the following conversations were intercepted by Special Agents of the Federal Bureau of Investigation:

a. On August 16, 1974 at about 6:25 p.m., FRANK CARUSO placed a call from telephone number 231-9506 (the telephone located at the ROSEWOOD LUNCHEONETTE) to LEO FARANDA at telephone number 798-5522 (the telephone located at LEO FARANDA'S GROCERIES, INC.) CARUSO asked FARANDA what the "New York number" was and FARANDA answered "159." CARUSO then asked FARANDA for the "Brooklyn number" and FARANDA replied he would have it in five to ten minutes.

b. On August 16, 1974 at about 2:12 p.m., CARUSO placed a call from telephone number 231-9506 to MICHAEL DITURI at telephone number 547-8607 (the telephone located at MIKE'S EXPRESSO). CARUSO tells DITURI that he (DITURI) should send a charge into the "office" for "IRV." CARUSO and DITURI then discuss various bets and an "edge." CARUSO tells DITURI to send another "slip" for "BLUE." They then discuss an amount of money involving a "TONY POST" for Thursday. DITURI also tells CARUSO about a "hit" on a number in Brooklyn and, after a pause, CARUSO confirms it. (Based on your affiant's prior experiences in investigating illegal gambling business, he believes that the names "BLUE" and "TONY POST" are codes for other participants in the gambling operation).

c. On August 17, 1974 the following incoming conversations were intercepted over telephone number 231-9506. At about 1:40 p.m. MICHAEL DITURI called and spoke to ROBERT D'ADDARIO. In the ensuing conversation, DITURI and D'ADDARIO discussed various baseball and football bets. At about 1:57 p.m. DITURI called and asked GINA SOMMA if CARUSO was there. ROBERT D'ADDARIO then got on the telephone and in the ensuing conversation with DITURI, DITURI relayed various sports bets to D'ADDARIO

d. On August 23, 1974, FRANK CARUSO placed two outgoing calls over telephone number 231-9506 to MICHAEL DITURI at telephone number 547-8607 (MIKE'S EXPRESSO):

1. At about 12:47 PM CARUSO called DITURI and they discussed the betting lines on baseball games being played on that day. In the course of this conversation CARUSO tells DITURI to put Atlanta at "6 to 7" and tells him to wait for the lineups to be announced.

2. At about 2:52 PM, CARUSO called DITURI and they discuss whether a third individual had visited DITURI. DITURI tells CARUSO that "he was here" and further states that "he" also had to see "LEO" and "LOUIS." (Based upon affiant's experience in investigating illegal gambling businesses, and this business in particular, your affiant believes that "he" refers to another participant in the illegal gambling business who was going to the various premises used by the gambling operation on that date and that "LEO" and "LOUIS" refer to LEO FARANDA and another identified participant in the illegal gambling business respectively.)

e. On September 3, 1974 at about 12:10 PM, LEO FARANDA called telephone number 231-9506 and spoke to GINA SOMMA. FARANDA asks GINA SOMMA for "what's his name" and then explains that "He's" (LEO) at the place "and that he has a "slip" that FRANK might have been looking for. CARUSO then entered the telephone conversation and tells FARANDA that "he (CARUSO) can't talk to him now" and further tells FARANDA to send the "slip" to him. (Based upon affiant's experience in investigating illegal gambling businesses, and this business in particular, your affiant believes that the term "slip" refers to a record used by and made in the operation of the illegal gambling business.)

f. On August 26, 1974, Special Agent Robert M. Caffrey observed ROBERT D'ADDARIO enter the premises of the ROSEWOOD LUNCHEONETTE at about 12:48 PM. At about 1:10 - 1:15 PM, he observed MICHEAL GAGLIANO also enter. At about 1:13 PM a conversation between D'ADDARIO and GAGLIANO was intercepted. D'ADDARIO and GAGLIANO discuss a mix-up in "work" that GAGLIANO had with him. D'ADDARIO states that he couldn't find "it" and asks GAGLIANO if he "marked the envelopes." GAGLIANO then stated that he had everything else and the conversation ends with D'ADDARIO telling GAGLIANO to contact "JIMMY" and "J.B.". (Based on affiants experience in investigation illegal gambling businesses, and this business in particular, your affiant believes that the "Envelopes" mentioned above contain the daily records of the gambling combine and the "J.B." is a code name for another participant in the gambling operation).

22. Pursuant to a court order issued on September 2, 1974 by the Honorable Constance Baker Motley, United States District Judge for the Southern District of New York, the following conversations were intercepted by Special Agents of the Federal Bureau of Investigation.

a. On September 28, 1974 at approximately 1:09 PM the following conversation between FRANK CARUSO and ROBERT D'ADDARIO emanating from the premises of the ROSEWOOD LUNCHEONETTE was intercepted,

CARUSO: Bobby, tell the kid to take a ride up to Leo's store. Tell him to call MIKE and tell him to give you whatever slips he has left, and give them personally to MIKE. All right?

D'ADDARIO: O.K.

(Based on my experience in investigating illegal gambling business and this business in particular, I believe that "LEO" refers to LEO FARANDA; "LEO'S STORE" refers to LEO FARANDA'S GROCERIES, INC.; and "MIKE" refers to MICHAEL DITURI. I further believe that this

conversation, coupled to the other facts set forth in this affidavit, demonstrates that CARUSO, FARANDA, DITURI, D'ADDARIO, and GAGLIANO are all part of the same gambling combine which utilizes both the premises of MIKE'S EXPRESSO and the ROSEWOOD LUNCHEONETTE).

b. On October 8, 1974, at approximately 1:30 PM the following excerpts of a conversation emanating from the premises of the ROSEWOOD LUNCHEONETTE between FRANK CARUSO and an unknown male named "DAN", last name unknown, were intercepted: CARUSO greets the unknown male by using the name "DAN." Subsequently, the following ensues

CARUSO: He said he put it with MIKE'S work.

DAN: "That is why I have to do the 222nd...I've got the man coming up from Simpson Street -- the white guy up there. Now another thing. If he picks up the ribbon in the morning... (Inaudible)...that's why I know who I got to pay." The conversation continues concerning "the man from Simpson Street" during which CARUSO uses the terms "street" and "tape". Later in the conversation the following occurred:

CARUSO: Get a master tape for each one, each one will have his own tape- that way you got no problems. All right?

DAN: This way I know where I got to go and who I got to pay.

CARUSO: Right. All you got to do is pay and collect at the end of the week.

The conversation then continues regarding other aspects of the illegal gambling operation.

23. The identification of participants in the conversations described in all of the foregoing paragraphs were made by officers of the New York City Police Department and by agents of the Federal Bureau of Investigation, who became familiar with the individuals and their voices in the course of the investigation.

OBSERVATIONS AT THE
PREMISES OF THE
ROSEWOOD LUNCHEONETTE

24. Numerous surveillances of the premises of the ROSEWOOD LUNCHEONETTE by Special Agents Walter Smith and Robert Caffrey of the Federal Bureau of Investigation reveal that FRANK CARUSO, ROBERT D'ADDARIO and MICHAEL GAGLIANO frequent the premises on a daily basis in furtherance of the gambling combines operation. More specifically, CARUSO and D'ADDARIO have been observed entering and exiting the premises at various times between the hours of 12:00 noon and 6:00 PM on every day from September 25, 1974 through October 2, 1974 and on October 4, 1974. With the exception of October 2, 1974, GAGLIANO has engaged in similar conduct on each of theafore-mentioned dates.

25. Additional observations ontheafore-mentioned dates reveal that CARUSO, D'ADDARIO, GAGLIANO, and others as yet unknown have entered or left the premises with paper bags or envelopes. Based on my training and experience in investigating illegal gambling businesses (which has many times disclosed the use of paper bags and envelopes, in similar circumstances, to carry gambling records), and this business in particular, I believe that these bags and envelops contain the records ("work" and "ribbons") used in and maintained by the gambling combine. These observations are set forth below:

a. On September 25, 1974, Special Agent Smith observed ✓GAGLIANO enter the premises carrying a brown paper bag and saw D'ADDARIO exit the premises carrying brown paper bags. Agent Smith also observed an unknown male enter the premises empty-handed and subsequently leave carrying a brown paper bag.

b. On September 26, 1974, Special Agent Smith observed GAGLIANO enter the premises carrying a brown paper bag.

c. On September 28, 1974 Special Agent Smith observed an unknown male hand an envelope to D'ADDARIO outside the premises and then observed D'ADDARIO enter the premises.

d. On September 29, 1974 Special Agent Caffrey observed CARUSO enter the premises carrying a brown paper bag.

e. On September 30, 1974, Special Agent Smith observed CARUSO, D'ADDARIO and GACILIANO each enter the premises while carrying a brown paper bag.

f. On October 1, 1974, Special Agent Caffrey observed D'ADDARIO enter the premises carrying a brown paper bag, and on October 4, 1974, Special Agent Smith observed D'ADDARIO do the same thing.

OBSERVATIONS AT
THE PREMISES OF MIKE'S EXPRESSO

26. Investigation at the location reveals that the premises of MIKE'S EXPRESSO are visited regularly by LEO FARANDA and one FRANK BATTISTA after the store is closed. Recently, both FARANDA and BATTISTA have been observed approaching the door of MIKE'S EXPRESSO after 7:00 PM. Each was seen dropping envelopes through the mail slot in the door and then leaving the area. Special Agent Edward M. Lahey observed this conduct on the following dates and times.

a. On September 30, 1974, FARANDA dropped off an envelope at about 7:47 PM.

b. On October 7, 1974, BATTISTA dropped off an envelope at about 8:17 PM.

c. On October 7, 1974, FARANDA dropped off an envelope at about 7:42 PM.

d. On October 8, 1974, BATTISTA dropped off an envelope at about 8:10 PM.

e. On October 11, 1974 at about 7:39 PM., Special Agent Caton Cantt observed FARANDA drop an envelope through the mail slot. IMMEDIATELY before this, Special Agent Frank Heaney had observed FARANDA leave the premises of LEO FARANDA'S GROCERIES, INC. and walk toward the premises of MIKE'S EXPRESSO. FARANDA had been in the premises of his store for at least one half hour before he exited.

27. FRANK BATTISTA is known to the New York City Police Department under number B152121. A review of records maintained by the New York City Police Department by Special Agent August J. Micek on April 30, 1974, reveals that BATTISTA had been arrested nine times for gambling violations.

28. Observations conducted early in this investigation

further reveal that both FARANDA and BATTISTA previously engaged in the same conduct as described in paragraph 25.

a. LEO FARANDA was observed dropping envelopes through the mail slot of the door to MIKE'S EXPRESSO on: April 24, 25 and 26, 1974; May 17, 20 and 28, 1974; June 3, 5, 11, 17 and 20, 1974.

b. FRANK BATTISTA was previously observed engaged in such conduct on: May 17, June 5 and June 11, 1974.

29. No previous applications for the order sought herein have been made to any court of this or any other jurisdiction.

WHEREFORE, your affiant respectfully requests that a Search Warrant in the form annexed be issued.

JULIUS J. BONAVENTURA
Special Agent
Federal Bureau of Investigation

✓Subscribed and sworn to before me
this day of October, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF AN APPLICATION :
FOR A SEARCH WARRANT TO SEARCH :
THE PREMISES KNOWN AS THE :
ROSEWOOD LUNCHEONETTE, LOCATED :
AT 3263 WHITE PLAINS ROAD, BRONX, :
NEW YORK; THE PREMISES KNOWN AS :
MIKE'S EXPRESSO, LOCATED AT 3607 :
BRONXWOOD AVENUE, BRONX, NEW :
YORK; THE PREMISES OF LEO :
FARANDA'S GROCERIES, INC., :
LOCATED AT 3601 BARNES AVENUE, :
BRONX, NEW YORK; AND THE PERSONS :
OF FRANK CARUSO, ROBERT D'ADDARIO, :
MICHAEL DITURI, LEO FARANDA AND :
MICHAEL GAGLIANO :

AFFIDAVIT

----- x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:
SOUTHERN DISTRICT OF NEW YORK)

Richard Baker, Robert Gaffrey, Caton Gantt, Frank
Heaney, Edward Lahey, Charles Queener, John Simmons, Gary
Skogland and Walter Smith, being duly sworn, depose and say:

1. We are each Special Agents of the Federal Bureau
of Investigation, duly appointed according to law and we sub-
mit this affidavit in support of an application by Special Agent
Julius J. Bonavolonta for search warrants of the premises and
persons captioned above.

2. We have each read the affidavit of Julius J.
Bonavolonta, the agent in charge of this investigation involving,
among others, Frank Caruso and the premises of the Rosewood

Luncheonette, and the references to our acts and observations
as stated in that affidavit are true.

Richard Baker Jr
RICHARD BAKER

Robert Caffrey
ROBERT CAFFREY

Caton Gantt
CATON GANTT

Frank Heaney
FRANK HEANEY

Edward M. Lahey
EDWARD LAHEY

Charles Queener
CHARLES QUEENER

John Simmons
JOHN SIMMONS

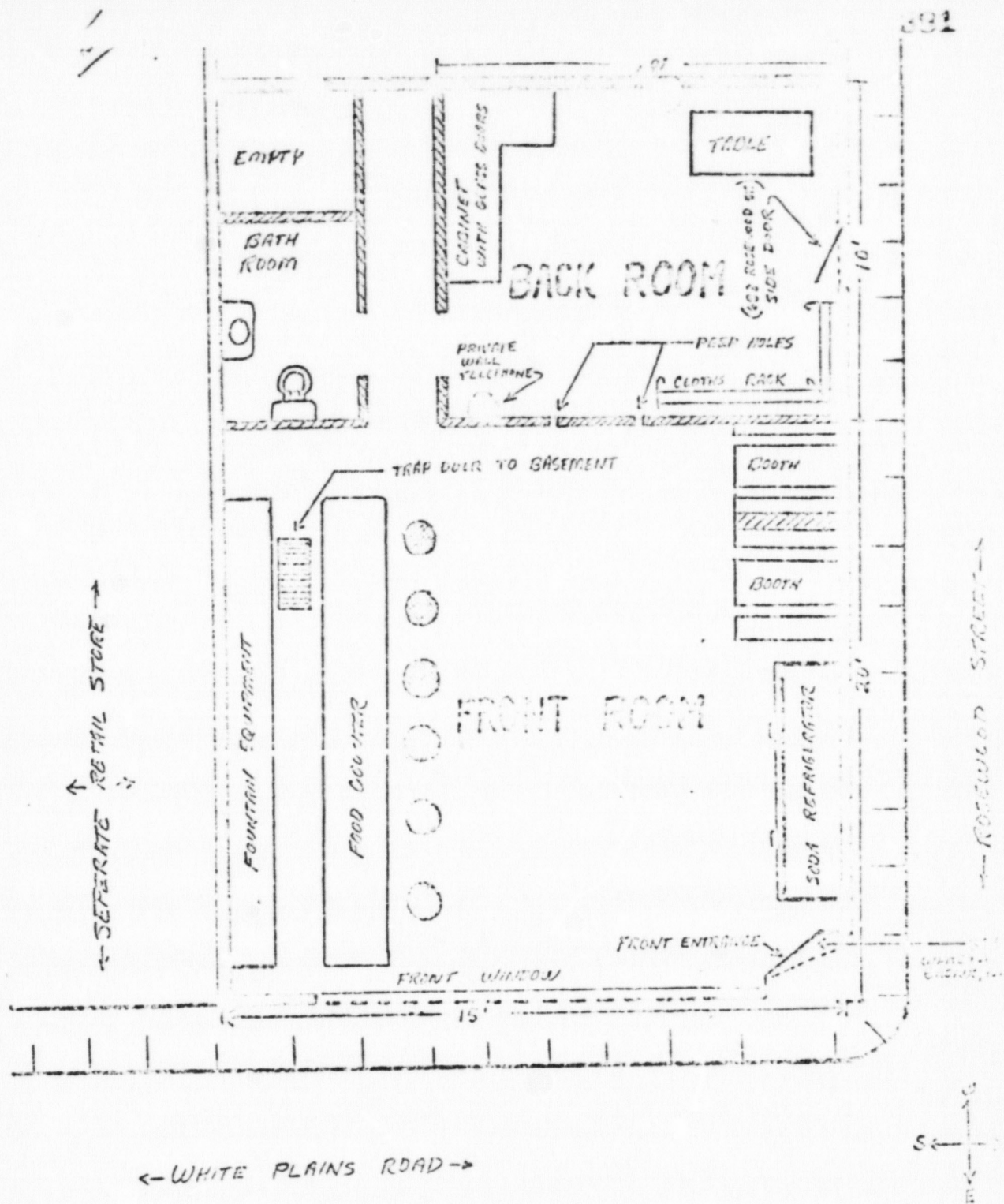
Gary Skogland
GARY SKOGLAND

Walter Smith
WALTER SMITH

Subscribed and sworn to before me
this 11th day of October, 1974.

Carl M. Bornstein
Notary Public

CARL M. BORNSTEIN
Notary Public, State of New York
No. 31-032776-0
Qual. in New York County
Comm. Expires March 30, 1975



DRAWING BY: SA JOHN J. SIMMONS, JR. ON 9-7-74

THE ABOVE FLOOR PLAN DRAWING OF THE ROSEBUD LUNCHEONETTE, 3000 WHITE PLAINS ROAD, N.Y.C. IS REPRODUCED ON THE VISUAL OBSERVATIONS OF SA LEO J. BONDVALONTH, FBI, AND POLICE OFFICER JOHN M. CLIFFEL, N.Y.C.P.D., BROOKLYN, N.Y.

-----X
UNITED STATES OF AMERICA

-v-

AFFIDAVIT IN OPPOSITION
TO DEFENDANTS OMNIBUS
MOTIONS

75 CR 1157 MP.

FRANK CARUSO
ROBERT D'ADDARIO
MICHAEL DITURI
MICHAEL DI RIENZO
ANDREW DI SIMONE
JOSEPH BUGLIARELLI
LEO FARANDA
CARMINE GAGLIANO
JOSEPH MESSINA
DANIEL LATELLA
EMIL ANNATONE

DEFENDANTS
-----X

Carl M. Bornstein, being duly sworn, deposes and says:

1. I am a Special Attorney with the Organized Crime and Racketeering Section of the United States Department of Justice assigned to the prosecution of the case captioned above and I submit this affidavit in response to the omnibus motions made by defendants in this case.

EARLIER PROCEEDINGS

2. All defendants in this case were arraigned on November 26, 1975. On December 17, 1975, counsel for defendant Cagliano moved for Discovery and Inspection and for a bill of particulars. On February 24, 1976, counsel for defendant Messina made a comparable motion. On March 2, 1976, a pre-trial conference was held and the Government submitted an affidavit in response to the pending motions and in anticipation of comparable requests by other defendants. This response set forth the scope of discovery consented to by the Government and the access to materials afforded all defense counsel. In the interim, this information had been orally furnished to defense counsel and copies of relevant eavesdropping orders were furnished as well.

3. Additional voluntary disclosure was made by the Government in a letter sent to all defense counsel dated April 23, 1976. This letter, which pertained to the several wiretaps in this case and the dates of sealing thereof, is annexed hereto as Exhibit A.

4. To facilitate reference to the numerous eavesdropping orders described in the numbered paragraphs of Exhibit A, a chronological listing of each order, by date of issuance, and the pertinent dates concerning each are set forth below.

a. The order of Judge Tyler described in paragraph 12, is hereinafter referred to as the Crescent wiretap.

Issued: February 7, 1973

Terminated: February 22, 1973

Tapes Sealed: January 7, 1974

b. The order of Justice Roberts, described in paragraph 11 is hereinafter referred to as the Blackman wiretap.

Issued: September 18, 1973

Terminated:

Tapes Sealed: October 18, 1973

c. The order of Justice Sullivan, described in paragraph 1 is hereinafter described as the Whalen I wiretap.

Issued: October 26, 1973

Terminated: November 25, 1973

Tapes Sealed: January 7, 1974

d. The order of Justice Bloom, described in paragraph 2 is hereinafter referred to as the Whalen II wiretap.

Issued: November 12, 1973

Terminated: November 25, 1973

Tapes Sealed: January 7, 1974

e. The order of Justice Bloom, described in paragraph 3 is hereinafter referred to as the Salomone wiretap.

Issued: November 28, 1973

Terminated: December 18, 1973

Tapes Sealed: January 11, 1974

f. The order of Justice Bloom, described in paragraph 4 is hereinafter referred to as the Social Club wiretap.

Issued: December 10, 1973

Terminated: January 8, 1974

Tapes Sealed: February 1, 1974

g. The order of Justice Bernstein, referred to in paragraph 5 is hereinafter referred to as the G & D wiretap.

Issued: January 5, 1974

Terminated: February 7, 1974

Tapes Sealed: March 21, 1974

h. The order of Justice Chananau, described in paragraph 6 is hereinafter referred to as the Vaccarelli wiretap.

Issued: April 22, 1974

Terminated: May 21, 1974

Tapes Sealed: May 23, 1974

i. The order of Justice Hughes, described in paragraph 7 is hereinafter referred to as the Faranda wiretap.

Issued: June 11, 1974

Terminated: June 30, 1974

Tapes Sealed: July 1, 1974

j. The order of Judge Ward, described in paragraph 8 is hereinafter referred to as the Espresso wiretap.

Issued: July 11, 1974

Terminated: July 30, 1974

Tapes Sealed: July 31, 1974

k. The order of Judge Owen, described in paragraph 9 is hereinafter described as the Rosewood wiretap.

Issued: August 15, 1974

Terminated: September 9, 1974

Tapes Sealed: September 10, 1974

l. The order of Judge Motley, described in paragraph 10 is hereinafter referred to as the Rosewood Renewal wiretap.

Issued: September 24, 1974

Terminated: October 13, 1974

Tapes Sealed: October 23, 1974

PENDING MOTIONS

5. On April 5, 1975, Paul A. Victor, Esq., counsel for defendant Gagliano, moved to: (a) controvert all eavesdropping orders and search warrants used in this case; (b) for additional disclosure of documents pertaining to the eavesdropping orders; and (c) for severance on grounds of misjoinder.

6. On April 30, 1976, Ronald P. Fischetti, Esq., counsel for defendant Caruso also made an omnibus motion.

7. I have been advised by Robert Keshner, Esq., of 1930 Grand Concourse, that he has replaced Richard Friedman, Esq., as counsel for defendant Bugliarelli.

8. In conversations I had had with counsel since April 26, 1976, each expressed a desire to join in all motions made by other defendants. The sole exception to this is Murray Richman, Esq., counsel for defendants D'Addario and Dituri, who intends to join only in the motions of defendant Caruso. For purposes of this affidavit, and the memorandum of law in support thereof, the responses will be addressed to issues raised in the motions of defendants Gagliano and Caruso but are made as though each defendant has joined in each motion.

ADDITIONAL INFORMATION

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9. During the week of May 17, 1976, I spoke to Detective William O'Connor, Shield No. 3256 and Police Officer Angelo Parisi, Shield No. 30777, of the Police Department of the City of New York, who were assigned to the investigation in which the State wiretaps involved in this case were utilized. Among other things, we discussed which, if any, of the defendants in this case were intercepted during the execution of any of the State wiretaps. They advised me of the following.

a. During the Whalen I and Whalen II wiretaps, none of the defendants in this case are known to have been intercepted.

b. During the course of the Salamone wiretap, none of the defendants in this case are known to have been intercepted.

c. During the course of the Social Club wiretap, only the defendant Dituri is known to have been intercepted.

d. During the course of the G & D wiretap, only the defendants Faranda, Dituri and D'Addario are known to have been intercepted.

e. During the course of the Vaccarelli wiretap, only the defendants Caruso, Faranda and Dituri are known to have been intercepted.

f. During the course of the Faranda wiretap, only the defendants Faranda, Caruso, Dituri, D'Addario and Gagliano are known to have been intercepted.

10. It is the Government's position that it will not offer as evidence during the trial of this case any of the tape recordings made pursuant to any of the State wiretaps. Defense counsel were informally advised of this position during discussions shortly after defendants were arraigned.

11. The Government opposes defendant's motions to controvert the search warrants and eavesdropping orders and to suppress the evidence derived therefrom, in this case.

12. With regard to his claim that he never received notice of the wiretaps, the Court's attention is directed to Exhibit A which reflects the service of the required Federal notices upon defendant Gagliano on October 24, 1974 and on January 9, 1975 by Special Agents of the Federal Bureau of Investigation. Upon information and belief, defendant Gagliano was served with notice of the Faranda wiretap on February 25, 1975 by Police Officer Klippel, of the New York City Police Department. Similarly, upon information and belief, on February 25, 1975, Police Officer Klippel served notice upon the defendants Caruso, D'Addario, Dituri and Faranda, regarding the Faranda and/or Vaccarelli wiretaps.

13. With regard to defendant's request for certain documents relating to the wiretaps in this case, it should be noted that the Government has made considerable voluntary disclosure both of documents and information pertaining thereto.

a. Copies of all the orders listed in Exhibit A have been mailed to each defense attorney, as was a copy of Exhibit A. Upon information and belief, this material was duly received by defense counsel.

b. The Government will furnish copies of the Court orders and papers pertaining to sealing, notice, inventory and progress reports. The materials pertaining to the Federal eavesdropping are under seal by order of this Court and the Government respectfully requests an order of this Court permitting the unsealing of these materials for duplication purposes. Copies of relevant State documents will be furnished by the Government.

14. With regard to defendant's motions concerning Discovery and Inspection, the Government respectfully directs this Court's attention to its affidavit submitted on March 2, 1976, which delineated the scope of voluntary disclosure the Government would provide.

a. It is submitted that the Government's affidavit of March 2, 1976, covered the requests of defendant in his paragraphs 6a, 6b, 6c, 6d, 6k, 6l, 6m, 6n, and 6o.

b. With regard to defendant's requests in his paragraphs 6f, 6g and 6h, the Government consents to these requests.

c. With regard to his requests in his paragraphs 6e and i, upon information and belief, and in accordance with the scope set forth in its affidavit of March 2, 1976, the Government has in fact made available to defense counsel copies of the tape recordings made in this case. Several counsel have conducted this inspection at the New York Office of the Federal Bureau of Investigation, at which times transcripts of the recorded conversations, which reflect the contents of said conversations, the date and time thereof, the parties thereto, and the telephone lines and instruments involved have been available. Beyond this, the Government opposes defendant's request.

d. With regard to the request in paragraph 6p, the Government does not know of any grand jury testimony of the defendant Caruso.

e. The Government opposes defendant's requests in his paragraphs 6q and 6r.

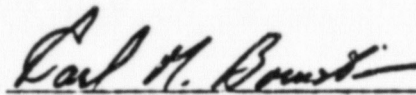
15. With regard to defendant's motion for a Bill of Particulars, it is submitted that the indictment in this case is quite specific, and that by virtue of the broad discovery consented to by the Government, all defendants have had virtually the opportunity to examine virtually all of the Government's case file. Coupling these two factors, it is submitted

that the defendant has more than enough information available to him to properly prepare his defense and to raise a claim of former jeopardy in the future.

16. The Government opposes defendant's motion to suppress the evidence derived from electronic surveillance.

17. The Government opposes defendant's motion to dismiss the indictment in this case.

WHEREFORE, except as consented to by the Government, it is respectfully requested that all defendants' motions be denied in all respects.



Carl M. Bornstein
Special Attorney
U.S. Department of Justice

Sworn to before me this
24th day of May, 1976



DIANNE T. RANDLE
NOTARY PUBLIC, STATE OF NEW YORK
NO. 41-60701
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES MARCH 30, 1977

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jbesb

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA
:
-v-
:
FRANK CARUSO, ROBERT D'ADDARIO,
MICHAEL DITURI, MICHAEL DIRENZO,
a/k/a "The Fish," ANDREW DISIMONE,
JOSEPH BUGLIARELLI, a/k/a "Blue,"
LEO FARNIDA, CARMINE GAGLIANO,
JOSEPH MESSINA, DANIEL LAPELLA and
EMIL ANNATONE,
:
Defendants.
:
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75 Crim. 1157

New York, New York
June 22, 1976

Before:

HON. MILTON POLLACK,
District Judge.

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.
United States Attorney
BY: CARL BORNSTEIN, ESQ.,
Special Attorney, Department of Justice.

(Appearances continued on next page.)

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jbesb

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(Appearances - continued)

For the Defendants:

James M. LaRossa, Esq.

Murray Richman, Esq.

Robert Keshner, Esq.

Vincent DeRosa, Esq.

Edward S. Panzer, Esq.

Michael Direnzo, Esq.

(Defendants present):

Frank Caruso

Robert D'Addario

Michael Dituri

Joseph Bugliarelli

Carmine Gagliano

Joseph Messina

Emil Annatone

(Other counsel and defendants
did not announce their presence,
if present in courtroom.)

1 jbesb-3

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2 (Case called.)

3 MR. BORNSTEIN: If I might, I have an order
4 for your Honor regarding the materials that were sealed
5 pertaining to the wiretaps.

6 (Pause.)

7 THE COURT: Now, Mr. DiRienzo, Mr. DiSimone and
8 Mr. Gagliano, are they all present?

9 MR. RICHMAN: I am afraid not. Apparently
10 Mr. Gagliano and Mr. DiRenzo are not present.

11 MR. DIRENZO: The name of the defendant is
12 DiRienzo, not Direnzo. I don't want his name to get con-
13 fused with mine.

14 THE COURT: Who is missing? Who is the
15 defendant who is not here?

16 MR. RICHMAN: DiRienzo and DiSimone. Mr.
17 Faranda and Mr. --

18 THE COURT: I want to find out who is here.
19 Mr. Annatone?

20 DEFENDANT ANNATONE: Here.

21 THE COURT: Mr. Bugliarelli? He has not
22 arrived yet?

23 MR. KESHNER: He hasn't arrived yet, your Honor.

24 THE COURT: Caruso?

25 DEFENDANT CARUSO: Yes.

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2 THE COURT: Mr. D'Addario?

3 DEFENDANT D'ADDARIO: Yes, sir.

4 THE COURT: Mr. DiRienzo is missing?

5 MR. RICHMAN: Missing.

6 THE COURT: Mr. Diturì?

7 DEFENDANT DITURI: Here.

8 THE COURT: Mr. DiSimone, missing.

9 Mr. Faranda is absent?

10 Mr. Gagliano?

11 DEFENDANT GAGLIANO: Here.

12 THE COURT: Mr. Latella?

13 He is missing.

14 Mr. Messina?

15 DEFENDANT MESSINA: Here.

16 THE COURT: Now, Mr. Richman, will you state

17 what it is you have to say about Mr. Slavetsky and Mr.

18 DiRienzo and Mr. DiSimone?

19 MR. RICHMAN: If the Court please, Mr. Slavitsky
20 called me yesterday, informed me that his brother, who is
21 scheduled to handle this matter, is in the hospital and
22 requested that I would represent his clients during the course
23 of the hearing.

24 I have not spoken to his clients nor have I had
25 any contact with his clients. However, I indicated to Mr.

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2 Slavetsky that I would act in his behalf to the extent that
3 I could.

4 THE COURT: You represent Mr. Dituri?

5 MR. RICHMAN: That's correct.

6 THE COURT: Does Mr. Dituri consent that you
7 also speak for these other two gentlemen, Mr. DiRienzo and
8 Mr. DiSimone?

9 MR. RICHMAN: Mr. Dituri indicated that he would
10 accept it.

11 THE COURT: Let him indicate it out loud.

12 DEFENDANT DITURI: Yes.

13 THE COURT: Now that leaves Mr. Faranda.

14 Would you state the situation on that, as to Mr.
15 Gagliano, also?

16 MR. LA ROSSA: Mr. Gagliano is apparently being
17 represented by Paul Victor, who called my office and did not
18 speak to me personally and asked if we would represent him
19 for the purposes of this hearing and he was so informed that
20 we would, with the permission of the Court and his client.

21 THE COURT: And Mr. Gagliano? Do you wish to
22 have Mr. LaRossa represent you for all purposes of this
23 hearing?

24 DEFENDANT GAGLIANO: Yes.

25 THE COURT: Does anybody know

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2 MR. LA ROSSA: Did you want Mr. Caruso to
3 consent to that?

4 THE COURT: Yes. Mr. Caruso, is that agreeable
5 to you -- that Mr. LaRossa, your attorney, would also
6 represent Mr. Gagliano at this hearing?

7 DEFENDANT CARUSO: Yes.

8 THE COURT: Does anybody know anything about Mr.
9 Herbert Siegal and why he or his client are not here?

10 MR. BORNSTEIN: I spoke to him but we didn't
11 discuss his presence here or not. He is aware of it.

12 THE COURT: Let's go back a moment and find out
13 what motions are pending on behalf, specifically, of Mr.
14 DiRienzo and Mr. DiSimone.

15 Are there any?

16 MR. BORNSTEIN: I conferred with Mr. Slavitsky
17 some time back and he indicated that he would be joining with
18 the motions made by the other defendants.

19 THE COURT: In other words, all he has done is to
20 join in but he has no independent, separate, motions pending
21 here, is that correct?

22 MR. BORNSTEIN: Not to my knowledge, no, sir.

23 THE COURT: You mean "yes," not to your knowledge?

24 MR. BORNSTEIN: That's correct, your Honor.

25 THE COURT: Has Mr. Faranda any separate motions?

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2 MR. BORNSTEIN: Same status.

3 THE COURT: Same status. All he is is a joiner.

4 And Mr. Latella, has he any separate motions?

5 MR. BORNSTEIN: Same status.

6 THE COURT: He is a joiner.

7 MR. BORNSTEIN: This is Mr. DeRosa here, your
8 Honor.

9 MR. DE ROSA: Good morning, your Honor.

10 THE COURT: Mr. DeRosa, you are representing
11 Mr. Faranda?

12 MR. DE ROSA: Yes, sir.

13 THE COURT: Is he here now?

14 MR. DE ROSA: No, he is not here.

15 THE COURT: Do you expect that he will not be
16 here?

17 MR. DE ROSA: No, your Honor.

18 THE COURT: He was notified of this hearing;
19 is that right?

20 Now, Mr. DeRosa, I just got through inquiring
21 and, as I understand it, you have no special motions of your
22 own that you have; you are merely joining in the motions of
23 others to the extent applicable?

24 MR. DE ROSA: Yes, your Honor

25 THE COURT: Thank you.

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8

2 Now, the subject of standing. I think we ought
3 to iron that out right at the start, because it may have the
4 effect of giving the persons whose particular applications
5 should be particularly heard a voice in this hearing.

6 Is there one among you who is going to partic-
7 ularly carry the laboring oar for all the others, with them
8 joining in?

9 MR. RICHMAN: I believe Mr. LaRossa is going to
10 do that.

11 THE COURT: It would be better to do that and
12 follow your points through somebody, if you can.

13 Mr. LaRossa, as I understand it, there are
14 eight State taps. Is that correct?

15 MR. LA ROSSA: That is correct, that we have
16 been made aware of. We assume that is all there are.

17 THE COURT: Of the eight State taps, only four
18 involve interceptions of any of the defendants, is that
19 correct?

20 MR. LA ROSSA: Your Honor, I have not been able
21 to get that representation from the Government.

22 THE COURT: Well, for the sake of convenience,
23 let's find out from the Government whether that is so.

24 Is that correct? Just answer these questions
25 one by one. Is that correct?

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2 MR. BORNSTEIN: Yes, through the Salamone
3 wiretap.

4 THE COURT: Now, can we identify at this point
5 the four of the State tapes involving interception of the
6 defendants by name of the tap?

7 MR. BORNSTEIN: On the Social Club wiretap,
8 your Honor, only the defendant --

9 THE COURT: No. You are telling me too much.
10 I just want the names of the four.

11 MR. BORNSTEIN: Social Club, G. & D.,
12 Vacarrelli and Faranda.

13 THE COURT: For the moment, Mr. LaRossa,
14 suppose you accept that as the fact and if you need proof
15 on it, call my attention to it, unless you accept the
16 Government's representation.

17 Now, as I understand it, on the subject of
18 sealing, two of the four were promptly sealed only one or
19 two days after termination, namely, the Vacarrelli tap,
20 authorized by Justice Schanahanau, and the Faranda tap
21 authorized by Justice Hughes.

22 Is that correct?

23 MR. BORNSTEIN: That is correct.

24 MR. LA ROSSA: That is correct.

25 THE COURT: So that there is no problem as to

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2 two with respect to sealing.

3 MR. LA ROSSA: Correct.

4 THE COURT: I also have a note that the G. & D.
5 tap authorized by Justice Bernstein terminated on February 7,
6 1974, and was sealed on March 21st.

7 Is that correct?

8 MR. BORNSTEIN: That will be stipulated to, your
9 Honor.

10 MR. LA ROSSA: That's correct.

11 THE COURT: Mr. LaRossa stipulates.

12 Further, that the Social Club tap or the
13 Battista tap, whichever way you want to refer to it, was
14 ordered by Justice Bloom and was terminated on January 8th
15 but was not sealed until February 1st.

16 MR. BORNSTEIN: Correct.

17 MR. LA ROSSA: Correct.

18 THE COURT: Now, the only defendants, therefore,
19 in a position to complain of late sealing are Faranda,
20 Dituri and D'Addario, who were overheard on the G. & D. tap
21 and Dituri, who was overheard on the Social Club tap.

22 Is that correct?

23 MR. BORNSTEIN: That is the Government's
24 position.

25 MR. LA ROSSA: That is what we have to get from

1 jbesb-11

2 the Government. I don't know that that is correct.

3 THE COURT: All right. Provisionally, is that
4 correct?

5 MR. BORNSTEIN: That is our position, Judge, yes.

6 THE COURT: Provisionally, that's correct.

7 You are not committed to it but that is what
8 their position is, so that you know what the targets are.

9 The reason for that is that the three names were
10 intercepted on the one tap and only one name was intercepted
11 on the other tap.

12 MR. LA ROSSA: And we are getting that as an
13 affirmance by the Government that they so state after
14 hearing the taps, that that is it, your Honor.

15 MR. BORNSTEIN: This is what we answered in our
16 affidavit, your Honor.

17 THE COURT: And you now repeat it as an
18 affirmation, is that right?

19 MR. BORNSTEIN: I must ask one proviso. I have
20 obviously personally not listened to every single tap. This
21 is based on conferences with the police, who were provided
22 with the names of the defendants, and were asked to review
23 the line sheets, which would have reflected who was
24 intercepted to their knowledge at that time, and my
25 information related to what I was told.

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2 MR. LA ROSSA: Did you also include Mr. Caruso
3 orally when you spoke?

4 MR. BORNSTEIN: The names of all defendants in
5 the case were given to the police for the specific question.

6 MR. LA ROSSA: My point is, did you tell us
7 orally that Caruso was intercepted on this?

8 MR. BORNSTEIN: He was intercepted on Vacarrelli.

9 THE COURT: That was on the Vacarrelli tap,
10 which was sealed timely.

11 MR. LA ROSSA: Not G. & D.

12 MR. BORNSTEIN: I will make sure in one second.

13 Your Honor, to the best of my knowledge, Mr.

14 Caruso was not intercepted on the G. & D.

15 THE COURT: That is not the question. The
16 question that you were asked was, did you orally represent
17 that he was intercepted on the Vacarrelli tap?

18 MR. BORNSTEIN: I don't recall doing so, Judge.

19 MR. LA ROSSA: That's it.

20 THE COURT: Well, have you any record that he
21 was or that he wasn't, as to the Vacarrelli tap?

22 MR. BORNSTEIN: No, your Honor. We are standing
23 by the information in the affidavit.

24 THE COURT: Does the affidavit say anything about
25 the Vacarrelli tap?

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2 MR. BORNSTEIN: Yes. In the Vacarrelli tap,
3 it reflects that Caruso was intercepted.

4 THE COURT: That is what Mr. LaRossa asked you
5 just now.

6 MR. LA ROSSA: Can I stop for a moment, because
7 we are in a crucial period.

8 I spoke to Mr. Bornstein yesterday and I said,
9 "In view of our conversations with Judge Pollack previously,
10 I will accept your representation if you tell me that you
11 have investigated the matter and you have got a
12 representation from a law enforcement officer as to each of
13 these items."

14 He said, "I can't do that."

15 Now, am I misquoting you?

16 MR. BORNSTEIN: Mr. LaRossa, I don't think we
17 have to --

18 THE COURT: Please don't go backward. Are you
19 misquoting him?

20 MR. BORNSTEIN: I think there is a gradation.
21 I don't think he is deliberately misquoting. I told him
22 that --

23 THE COURT: Will you stop a minute. I am always
24 interested in history but not today. I want to know what
25 the fact is today.

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2 Let's go down each of the taps and find out
3 what your affidavit says and what your investigation shows
4 and what you are representing to the Court in respect to
5 who was intercepted.

6 MR. LA ROSSA: That is what I want, sir.

7 THE COURT: I will say that unless a person was
8 intercepted, the rule in this Circuit seems to be that he
9 has no standing to complain about a tap.

10 Do you agree with that?

11 MR. LA ROSSA: No, sir.

12 THE COURT: You don't?

13 MR. LA ROSSA: I agree with what the Circuit
14 said but I respectfully submit that in the United States
15 against Manfredi, you are going to have to determine this
16 issue based upon New York law, and I respectfully submit the
17 two cases cited in the Petitioners's brief, People against
18 Koutnik, cited at 353 NY Sup. 2d, 197, and People against
19 Henry Brown, 80 Misc. 2d, 777, speak to this issue, your
20 Honor, and it is exactly the same proposition that your
21 Honor is faced with at the present time.

22 THE COURT: All right. Now, let me ask you this:

23 Do you agree that the following represents the
24 law of the Second Circuit Court of Appeals, and I am reading
25 to you from United States of America versus James Wright,

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2 and the citation is 524 F. 2d, 1100, Second Circuit, 1975,
3 opinion by Circuit Judge Van Graafeiland. He stated
4 therein:

5 "More importantly, we fail to see how appellant
6 has standing to assert the illegality of the April taps.
7 In order to challenge wiretap derived evidence, one must be
8 'an aggrieved person,' i.e., one who was a party to an
9 intercepted wire or oral communication or against whom the
10 interception was directed, 18 USC Sections 2510, 2518.

11 "Since Appellant was not a party to any
12 intercepted April communications, none of which occurred on
13 his premises, he is not aggrieved. In re, Delinger, 461 F.
14 2d, 389, 392, Second Circuit, 1972; Alderman versus United
15 States, 394 US 165 (1969).

16 "We therefore conclude that since appellant
17 could not have challenged the April wiretaps directly by
18 suppressing information therefrom, he cannot challenge them
19 indirectly by suppressing evidence from the subsequent taps
20 in a search warrant which was secured in part through the
21 same information. United States versus Gibson, United
22 States versus Scasino, 513 F. 2d, 47, Fifth Circuit 1975;
23 United States versus Lanese, 385, F. Sup., 525, Northern
24 District of Ohio, 1974."

25 Now, do you say, Mr LaRossa, that the two New

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2 York cases that you have cited are contrary to the Federal
3 law that I have just read to you?

4 MR. LA ROSSA: No, sir.

5 THE COURT: What?

6 MR. LA ROSSA: I'm sorry. Can I have a moment.

7 (Pause)

8 MR. LA ROSSA: Yes, I am sorry, I feel there is
9 a contrast.

10 THE COURT: In other words, if the case were to
11 be judged on the Federal principle set forth in the
12 quotation that I have read to you, there would be no
13 standing on anyone's part who was not intercepted to
14 challenge a subsequent tap?

15 MR. LA ROSSA: Intercepted or named as a
16 subject.

17 THE COURT: Intercepted, named as a subject or
18 whose property it was.

19 MR. LA ROSSA: Right.

20 THE COURT: Is that correct?

21 MR. LA ROSSA: That's correct. We are
22 suggesting that these cases and Manfredi's comments that
23 New York State law must apply changed the circumstances.

24 MR. BORNSTEIN: If I may be heard for a moment,
25 your Honor.

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2 THE COURT: Yes, on that specific point.

3 MR. BORNSTEIN: Your Honor, I think that the
4 New York authorities will be distinguished by virtue of the
5 fact that we are dealing here with a post interception
6 problem as opposed to something going to the legality of
7 the seizure.

8 I think Mr. LaRossa's position might be on
9 firmer ground if we were talking about the legality of the
10 one intercept which subsequently led to another wire order.
11 That is not disputed here.

12 We maintain that whether or not sealing
13 provisions were complied with, it in no event affects the
14 legality of the seizure. It is removed and the issue of
15 taint is removed and any --

16 THE COURT: But that carries the problem one
17 step further. What you are saying to me, in effect, is that
18 even if there were a disparity between New York law and
19 Federal law, as I quoted it, that the problem doesn't reach
20 this case because the sealing requirement is not one that
21 carries a taint into the subsequent tap.

22 MR. BORNSTEIN: Precisely, your Honor.

23 THE COURT: That poses the issue of law very
24 clearly.

25 Apparently, it is also the law of this Circuit

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2 as reflected in United States against Poeta, 455 F. 2d,
3 117, at 122, that even if there is so-called late sealing,
4 that that is an event for which a satisfactory explanation
5 may be made by evidence; that is, it is not unalterably an
6 event which taints the subsequent tap.

7 On the assumption that a satisfactory
8 explanation can be established, the matter does not rise to
9 the level where the subsequent tap must be voided.

10 MR. BORNSTEIN: The preliminary position to that,
11 your Honor, and it is twofold --

12 THE COURT: Is that your position, at least to
13 the extent that I have given it?

14 MR. BORNSTEIN: Absolutely.

15 THE COURT: What is the preliminary position?

16 MR. BORNSTEIN: We maintain that the sealing
17 requirements, either under State or Federal law, are not
18 applicable to the use made of the information in this case.

19 THE COURT: On the ground that use is not being
20 made for evidentiary purposes. Is that what you are saying?

21 MR. BORNSTEIN: Correct.

22 THE COURT: And the statute refers to the use of
23 the prior tap as evidence.

24 MR. BORNSTEIN: Precisely.

25 THE COURT: And the obtaining of a second tap is

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19

2 not a use of a prior tap as evidence, is that your position?

3 MR. BORNSTEIN: Yes, your Honor.

4 THE COURT: Now, I think that that probably
5 exposes the legal positions that we are faced with this
6 morning and I think that what we can do is to proceed to
7 take the proof in the order in which the Government believes
8 it should be presented.

9 MR. BORNSTEIN: Well, Judge, I am ready to
10 proceed on several different fronts.

11 I simply might add here, however, that if your
12 Honor agrees with the Government's position that the sealing
13 requirement does not apply to the use made of the
14 information in this case, I think there would be a question
15 as to the need to demonstrate a satisfactory explanation to
16 begin with.

17 THE COURT: Well, I'll tell you this right now.
18 In the interests of judicial husbandry, I will take proof of
19 the explanation so that if there is any question as to a
20 rule of law that I might make, at least all the evidence will
21 be before a reviewing court.

22 MR. BORNSTEIN: Very good, Judge.

23 THE COURT: Now, the only one of those whom we
24 have not had some explanation for is Mr. Bugliarelli.

25 Mr. Keshner?

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2 MR. KESHNER: Yes, your Honor.

3 THE COURT: It is my information that at least
4 as early or perhaps as late as six o'clock this morning,
5 your client was on his way to the courthouse from wherever
6 he is located.

7 Now, let me ask you this question:

8 Is there any specific motion that you are making
9 or are you one of those who are merely joining in as your
10 interest may appear and to an appropriate extent with
11 applications made by others?

12 MR. KESHNER: Your Honor, I do not have an
13 independent motion of my own since I came to the case late.
14 There was another attorney that preceded me. I am here to
15 observe and should the occasion arise where a motion would
16 be necessary or I would join in, I would join in at that
17 time.

18 THE COURT: It will be too late for you to start
19 making motions. We are about to go to trial.

20 Any motions that should have been made should
21 have been made by you or your predecessor before now and,
22 accordingly, your status will be deemed to be that of a
23 person who has not made a motion -- that is, your client's
24 status.

25 The only other question is the presence of your

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2 client.

3 Now, if you don't have standing, and I am
4 prepared to rule that only those who were intercepted or
5 against whom the tap was directed or those whose property
6 it was have standing -- that is the Federal law -- and I
7 don't believe your client comes into any of those
8 categories.

9 Is that correct?

10 MR. KESHNER: Well, that's correct, your Honor,
11 based on information and belief that I have at this time.

12 THE COURT: All right. Now, look, if you are
13 telling me that you are an inadequate lawyer and can't
14 properly represent your client, I will do something about
15 your professional status. But I am not going to listen to
16 a lot of if's, and's and but's every time you say something
17 on the basis that you are not ready.

18 MR. KESHNER: I am not saying that. I am ready.
19 The issue of my client is a matter of identification, but I
20 say I am here if something should arise that involves my
21 client which I don't know.

22 THE COURT: Now, on the matter of identification,
23 as long as you have brought that up, I understand that that
24 is being separately treated, is that right?

25 MR. BORNSTEIN: That's correct, your Honor, and

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2 if I may make application at this point for the purposes of
3 the record, we would ask that at some point during the
4 hearing the Government be permitted to break seal upon the
5 three cartons of tapes that are presently in the courtroom
6 which were seized pursuant to the three Federal orders of
7 July 11th, August 15th and September 24th for purposes of
8 making duplicate tapes from the originals, both as to Mr.
9 Bugliarelli and Mr. Gagliano, where there is a comparable
10 issue. We have tried several times for duplicates and
11 have not been able to get a good copy.

12 Furthermore, we would ask at this time to have
13 Mr. Bugliarelli -- and I have conferred with Mr. Victor, as
14 well -- in an effort to expedite the claim involved, we
15 would ask for an order that Mr. Bugliarelli be permitted, if
16 need be, to be delivered to the FBI headquarters in New York
17 for purposes of obtaining a voice sample and we, of course,
18 would provide the duplicate to Mr. Keshner for his expert to
19 analyze as well.

20 If that can be done here, we will; if not, we
21 will ask for an order that he be delivered to the FBI
22 office. Mr. Victor has consented to Mr. Gagliano.

23 THE COURT: If I understand the purpose of this,
24 if a voice identification test is made and the voice is not
25 identified, the Government is prepared to nolle?

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2 MR. BORNSTEIN: If both experts concur, your
3 Honor, yes.

4 THE COURT: And if the voice identification is
5 made to the satisfaction of the defendants and their counsel,
6 that they have no further axe to grind on these motions, is
7 that correct?

8 MR. BORNSTEIN: On the motions, yes, your Honor.

9 MR. KESHNER: That's correct, your Honor.

10 THE COURT: Then I will authorize the unsealing
11 of the three packages, or whatever they are, for the purpose
12 indicated and also, if it becomes necessary for a voice
13 identification test; I hereby do order that the two
14 gentlemen involved submit to a voice test at FBI
15 headquarters or the courthouse, whichever is the proper
16 place, in order to effect that purpose.

17 MR. BORNSTEIN: Thank you, your Honor.

18 May I as a preliminary matter, so that we can
19 even get these tapes marked as evidence, which may expedite
20 this a little bit, there has been a stipulation which will
21 put in evidence some pertinent information for purposes of
22 this hearing and also as exhibits, all of the wiretap
23 orders that are involved in this case, so we can at least
24 have it on the record.

25 THE COURT: All right.

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2 MR. BORNSTEIN: If I may confer with counsel so
3 that we can have some additional signatures for the attorneys
4 for the defendants they are now additionally representing?

5 THE COURT: All right.

6 (Pause)

7 THE COURT: I accordingly sign the order which
8 will require the production before me for further
9 proceedings in this case of the material sealed by Judges
10 Ward, Owen and Motley.

11 MR. BORNSTEIN: There is also one document by
12 Judge Weinfeld.

13 THE COURT: And by Judge Weinfeld.

14 The order has been signed and is delivered to
15 the clerk.

16 (Defendant Bugliarelli entered the courtroom.)

17 MR. PANZER: Your Honor, I want to clarify what
18 my position is going to be.

19 I represent Mr. Joseph Messina.

20 Has your Honor ruled that the only people that
21 have standing with respect to this motion and hearing are the
22 three individuals that were heard on the State taps and
23 other individuals do not have standing with respect to the
24 issues before your Honor today?

25 THE COURT: The issue being the question of

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2 prompt sealing?

3 MR. PANZER: Correct, your Honor.

4 THE COURT: Yes. I hold that the matter of
5 prompt sealing does not rise to the proportions expressed
6 in the cases cited by Mr. LaRossa, namely, People against
7 Koutnik and People against Brown, respectively, in 353
8 N.Y. Sup. 2d, 197 and 80 Misc. 2d, 777, and the Appellate
9 Division case cited therein; that on the matter of sealing,
10 any error or impropriety does not necessarily result in
11 such an inextricable intertwining of problems as was created
12 in the case decided by Mr. Justice Roberts in the State
13 Court and in the other cases also mentioned, and that the
14 only persons who have standing in respect of sealing, if
15 any there be, bearing in mind the argument of the Government
16 that sealing does not raise an evidentiary question as to
17 the second tap, the only persons who do have standing would
18 be those who were in the categories of being intercepted or
19 targets or owners of the property.

20 MR. BORNSTEIN: Might I read from portions of
21 the stipulation so that we can introduce the various
22 orders and dates that are relevant thereto:

23 It is hereby stipulated and agreed by myself
24 for the United States of America on behalf of Robert B.
25 Fiske, Jr., United States Attorney for the Southern District

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2 of New York, and the defendants captioned above by their
3 respective attorneys who have subscribed their names to
4 this stipulation, that Government's Exhibit 6 is a copy of
5 the warrant issued by Justice Bloom on December 10, 1973,
6 which authorized the interception of communications over
7 telephone line and number 881-4450.

8 This is what we refer to now as the Social Club
9 tap, your Honor.

10 Execution of this warrant terminated on
11 January 8, 1974. The tape recording of communications
12 intercepted pursuant to this warrant were sealed before
13 Justice Bloom on February 1, 1974.

14 We offer the order itself with the accompanying
15 papers as Government's Exhibit 6 in evidence for this
16 hearing.

17 THE COURT: In other words, there was a 24-day
18 gap, is that right?

19 MR. BORNSTEIN: Approximately right, your Honor,
20 yes.

21 THE COURT: Received without objection.

22 (Government's Exhibit 6 for identification
23 received in evidence.)

24 MR. BORNSTEIN: Government's Exhibit 7 is a
25 copy of the warrant issued by Justice Lawrence Bernstein of

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2 the New York State Supreme Court on January 24, 1974, which
3 authorized the interception of wire communications
4 transmitted over telephone line and number 653-3341.

5 This is what we have been referring to as the
6 G. & D. wire tap.

7 Execution of this warrant terminated on
8 February 7, 1974. The tape recordings of communications
9 intercepted pursuant to this warrant were sealed before
10 Justice Bernstein on March 21, 1974.

11 We offer the order and accompanying papers as
12 Government's Exhibit 7 for this hearing.

13 THE COURT: Received without objection.

14 (Government's Exhibit 7 for identification
15 received in evidence.)

16 THE COURT: That means that that was a 42-day
17 gap?

18 MR. BORNSTEIN: That is what I count, Judge.

19 Government's Exhibit 8 is a copy of the warrant
20 issued by Justice Alexander Schanahanau of the New York State
21 Supreme Court on April 22, 1974, which authorized the
22 interception of communications over telephone line and
23 number 994-2007.

24 Execution of this warrant terminated on May 21,
25 1974. The tape recordings of communications intercepted

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2 pursuant to this warrant were sealed before Justice
3 Schanahanau on May 23, 1974.

4 This is the Vacarrelli tap, offered in evidence
5 as Government's Exhibit 8.

6 THE COURT: Received without objection.

7 (Government's Exhibit 8 for identification
8 received in evidence.)

9 MR. BORNSTEIN: Government's Exhibit 9 is a
10 copy of the warrant issues by Justice Thomas Hughes of the
11 New York State Supreme Court on June 11, 1974, which
12 authorized the interception of communications transmitted
13 over telephone line and number 798-5522.

14 We have been referring to this as the Faranda
15 wire tap.

16 Execution of this warrant terminated on June 30,
17 1974. The tape recordings of communications intercepted
18 pursuant to this warrant were sealed before Justice Hughes
19 on July 1, 1974.

20 We offer the order and papers as Government's
21 Exhibit 9.

22 THE COURT: Received without objection.

23 (Government's Exhibit 9 for identification
24 received in evidence.)

25 MR. BORNSTEIN: Government's Exhibit 10 is a

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2 copy of an order issued by District Judge Robert Ward on
3 July 11, 1974, which authorized the interception of oral
4 communications at the premises of Mike's Expresso and of
5 wire communications transmitted over telephone line and
6 number 547-8607.

7 We have been referring to this as the Expresso
8 wire tap.

9 Interception of oral communications terminated
10 on July 29, 1974 and interception of wire communications
11 terminated on July 30, 1974. The tape recordings of
12 communications intercepted pursuant to this order --

13 THE COURT: What terminated on July 29th?

14 MR. BORNSTEIN: Oral communications. And wire
15 communications on the 30th.

16 The tape recordings of communications
17 intercepted pursuant to this order were sealed before Judge
18 Ward on August 1, 1974.

19 A copy of the order, application and affidavit
20 are offered as Government's Exhibit 10.

21 THE COURT: Received without objection.

22 (Government's Exhibit 10 for identification
23 received in evidence.)

24 MR. BORNSTEIN: Government's Exhibit 11 is a
25 copy of the order issued by United States District Judge

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2 Richard Owen on August 15, 1974, which authorized the
3 interception of oral communications at the premises of the
4 Rosewood Luncheonette and the interception of wire
5 communications transmitted over telephone line and number
6 231-9506.

7 Execution of this order terminated on
8 September 4, 1974. The tape recordings of conversations
9 intercepted pursuant to this order were sealed before
10 Judge Owen on September 10, 1974.

11 We offer these in evidence as Government's
12 Exhibit 11 for this hearing.

13 THE COURT: How do you describe those tapes?
14 With what rubric?

15 MR. BORNSTEIN: Judge, I am going to ask that
16 the respective tapes be deemed marked 10-A, 11-A and 12-A.

17 THE COURT: That is satisfactory, but did you
18 give the other tapes a name so that they can be identified
19 like Espresso or Faranda?

20 MR. BORNSTEIN: Rosewood, your Honor.

21 (Government's Exhibit 11 for identification
22 received in evidence.)

23 MR. BORNSTEIN: Government's Exhibit 12 is a
24 copy of the order issued by United States District Judge
25 Constance B. Motley on September 24, 1974, which authorized

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2 continued interception of oral communications at the
3 premises of the Rosewood Luncheonette and the continued
4 interception of wire communications transmitted over
5 telephone line and number 231-9506.

6 Execution of this order terminated on October 13,
7 1974. The tape recordings of communications intercepted
8 pursuant to this order were sealed before Judge Motley on
9 October 23, 1974.

10 We are referring to this as the Rosewood
11 Renewal, and we offer these.

12 THE COURT: Received without objection.

13 (Government's Exhibit 12 for identification
14 received in evidence.)

15 MR. BORNSTEIN: Your Honor, simply to perhaps
16 simplify the record for later references, may I offer the
17 stipulation that has been agreed to as Government's Exhibit
18 13?

19 THE COURT: Received.

20 (Government's Exhibit 13 for identification
21 received in evidence.,

22 MR. BORNSTEIN: If I may offer as Government's
23 Exhibit 14, I believe this will be referred to at a
24 subsequent point, the search warrant or the affidavit, the
25 support of the application for a search warrant made by

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2 Special Agent Jules Bonavolonta for the premises of the
3 Rosewood Luncheonette, the premises of Mike's Espresso, the
4 premises of Leo Faranda's Groceries and the premises of
5 Frank Caruso, Robert D'Addario, Michael Dituri, Leo Faranda
6 and Mike Gagliano.

7 These are offered as Government's Exhibit 14.

8 THE COURT: Any objection?

9 Received without objection.

10 (Government's Exhibit 14 for identification
11 received in evidence.)

12 MR. BORNSTEIN: Your Honor, both for purposes
13 of the hearing and for purposes of the application of the
14 order, we offer a box of tapes which has been sealed by
15 Judge Robert Ward, and we offer this as Government's
16 Exhibit 10-A in evidence.

17 MR. LA ROSSA: For the purposes of the hearing
18 and what?

19 MR. BORNSTEIN: For the purposes of the hearing
20 and for the application that we made earlier to break seal
21 to get the voice duplicates.

22 MR. LA ROSSA: All right.

23 MR. BORNSTEIN: The box signed by Judge Robert
24 E. Ward is offered as 10-A. We would appreciate this being
25 marked, your Honor.

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2 (Government's Exhibit 10-A for identification
3 received in evidence.)

4 MR. BORNSTEIN: A carton sealed by Judge
5 Richard Owen, carton containing tapes, to be offered in
6 evidence as Government's Exhibit 11-A.

7 (Government's Exhibit 11-A for identification
8 received in evidence.)

9 MR. BORNSTEIN: A carton of tapes sealed by
10 Judge Constance Baker Motley offered in evidence as
11 Government's Exhibit 12-A.

12 (Government's Exhibit 12-A for identification
13 received in evidence.)

14 MR. BORNSTEIN: If your Honor please, I know
15 Mr. LaRossa at a pretrial conference expressed some concern
16 about the precise method of sealing of the tapes.

17 We have an application up in the Bronx
18 Courthouse to bring down the tapes for the other State wires
19 as well. They are on route and must have hit a snag.

20 MR. LA ROSSA: Before we go any further in the
21 legal argument, may I move at this time to exclude all
22 potential Government witnesses.

23 THE COURT: Are there any in court?

24 MR. BORNSTEIN: Yes.

25 THE COURT: All right.

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1 jbeso

2 (Two people left the courtroom.)

3 MR. LA ROSSA: There is one thing I did not
4 bring to your attention with respect to sealing, and that
5 is another section of the Criminal Procedure Laws of the
6 State of New York.

7 The Government has agreed that the application
8 herein is under 700.65 Subdivision 3, which reads:

9 "Any person who has received by any means
10 authorized by this article any information concerning a
11 communication or evidence derived therefrom intercepted in
12 accordance with the provisions of this article may disclose
13 the contents of that communication or such derivative
14 evidence while giving testimony under oath in any criminal
15 proceeding."

16 Now, if I may refer the Court to Section 1.20
17 of the Criminal Procedure Law which defines a criminal
18 proceeding --

19 THE COURT: Just one moment, please.

20 Were you reading from 700.65, Subdivision 3?

21 MR. LA ROSSA: Yes, yes. That section goes on
22 to read --

23 THE COURT: Just a minute.

24 MR. LA ROSSA: May I refer you to 1.20 of the
25 Criminal Procedure Law, which is a section that has numerous

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2 definitions in it, and refer you to number 18, which
3 defines what a criminal proceeding is.

4 THE COURT: What is the definition?

5 MR. LA ROSSA: The definition of a criminal
6 proceeding means any proceeding which (a) constitutes a
7 part of the criminal action or (b) occurs in criminal court
8 and is related to a prospective, pending or completed
9 criminal action, either in this State or any other
10 jurisdiction, or involves a criminal investigation.

11 We respectfully submit that the application for
12 the next wiretap order is a criminal proceeding under
13 Subdivision 18 of 1.20, and then I refer the Court back to
14 Subdivision 3 of 700.65, which is the sealing requirement
15 which refers to a criminal proceeding and submits that the
16 presence of the seal or satisfactory explanation of the
17 absence thereof shall be a prerequisite for the use or
18 disclosure of the contents or of any communication or
19 evidence derived therefrom.

20 Referring back to the words "criminal proceeding,"
21 we submit that the criminal proceeding is the prospective
22 action in any criminal proceeding and, therefore, would
23 include the application for another warrant.

24 MR. DIRENZO: I take it that Mr. Bornstein has
25 stipulated to that, is that correct?

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2 MR. BORNSTEIN: I have no idea at this point
3 what I am being asked to stipulate, sir.

4 THE COURT: I would be surprised if he stipulated
5 to any such conclusory result. What you are asking him to do
6 is stipulate himself out of court and I don't think he did
7 that just yet.

8 All right. I have your point.

9 MR. BORNSTEIN: Could I be heard on that or do
10 you want to move on?

11 THE COURT: If you want to be heard.

12 MR. BORNSTEIN: Briefly, it would be our
13 position that the term "criminal proceeding" as used within
14 both the State law and the Federal law refers to an adversary
15 type proceeding.

16 The sole distinction is the inclusion of the
17 phrase "grand jury" within Section 700.65, Subdivision 3,
18 whereas, in Title 18, Section 2517, Subdivision 3, the phrase
19 is simply "in any proceeding."

20 THE COURT: How do you square that with the
21 word "investigation"?

22 MR. BORNSTEIN: In what portion?

23 THE COURT: In the definition.

24 MR. BORNSTEIN: May I refer back to that for a
25 moment?

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2 THE COURT: Yes.

3 (Pause)

4 MR. BORNSTEIN: Judge, we would square it by
5 the parallels drawn between the State and Federal
6 counterparts for a moment and the interesting aspect is that if
7 the phrase as used in Subdivision 3, if Subdivision 18 of
8 Section 120, which uses the phrase "investigation," were
9 meant to include this particular use, then there would have
10 been no reason for the legislature to have included the
11 phrase beyond "in any criminal proceeding, in any court or
12 in any grand jury proceeding."

13 In other words, what we are saying is that --

14 THE COURT: You are saying that Subdivision 3 of
15 700.65 is limited to court proceedings and grand jury
16 proceedings, and a definition that defines a criminal
17 proceeding carries it beyond the courthouse and the grand
18 jury, but isn't an investigation conducted in a court
19 proceeding?

20 MR. BORNSTEIN: I think, your Honor, that the
21 second part of that description, "in any court or in any
22 grand jury proceeding," modifies the phrase "in any criminal
23 proceeding," because had the legislature intended to include
24 this sort of use, there is simply no need for Subdivision 2.
25 There is no need to go beyond "in criminal proceeding."

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2 I think in this case, criminal proceeding is
3 held more narrowly particularly when we get to Subdivision
4 2, which is almost a verbatim parallel of the Federal
5 statute, which clearly says that the ex parte warrant or
6 ex parte proceeding is Subdivision 2 as opposed to
7 Subdivision 3.

8 There would be no need for the phrase in
9 Subdivision 3 of the State law. The only distinction we
10 see between the two subdivisions is that in State law they
11 simply include grand jury proceeding, and I would say that
12 it is a gray area at this point by virtue of some unrelated
13 opinions as to whether a grand jury proceeding is included
14 within the meaning of Subdivision 3 of 2517 of the Federal
15 law.

16 But the way Subdivision 3 reads, there would be
17 no sense in putting in the modifier "in any court or in any
18 grand jury proceeding," if the breadth of the original
19 definition were meant to have any effect because, arguably,
20 at least, it could include the eavesdropping use.

21 THE COURT: The only thing you have to add to
22 your respective arguments is to indicate to me whether the
23 legislature thought about this or thought about it at all
24 or thought about it in the way that you are thinking about
25 it and perhaps we need some legislative input.

1 jbesb

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2 MR. LA ROSSA: If you will give us a day, we
3 will be happy to do that, your Honor. I think that all
4 we will need is 24 hours.

5 THE COURT: All right.

6 Now, the definition section, if it doesn't help
7 you out, Mr. LaRossa, then it looks like your point would
8 not go beyond the ruling I have already made subject to
9 the correctness of that ruling.

10 Is that right?

11 MR. LA ROSSA: In effect, you are right. If
12 we have narrowed it to a point of whether or not your
13 Honor's decision is correct is going to be the factor.

14 THE COURT: In other words, we have narrowed
15 the issue to whether or not I follow Judge Van Graafeiland's
16 decision or Justice Roberts' theory.

17 MR. LA ROSSA: Not just Justice Roberts. The
18 other case that I submitted to you is a New York State
19 Appellate Division --

20 THE COURT: I know, but the other case doesn't
21 explicate it as fully as Justice Roberts did and that is
22 the reason I called it the Roberts position of intertwining
23 inextricably a lot of things that really have nothing to
24 do with the sealing, in my judgment.

25 All right.

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2 MR. BORNSTEIN: Judge, if I may, on the
3 legislative aspect, one further thing:

4 The New York penal law or the criminal law was
5 enacted in 1971 or became effective in 1971. There is a
6 reference throughout Article 700 of that law to the effect
7 that it is predicated upon the 1968 Federal Crime Control
8 Act, which is the predicate of Title 3.

9 I don't believe the simultaneous enactment, as
10 it were, of the two phrases could have been anything but
11 the attempt to parallel the Federal intent with the
12 additional modifier that it includes a grand jury proceeding.

13 THE COURT: What was the definition of the
14 section?

15 MR. BORNSTEIN: I don't have that before me,
16 your Honor. I don't have that before me. I can check it.

17 THE COURT: Isn't it at the foot of the statute?

18 MR. BORNSTEIN: Not that particular page. The
19 subdivision is higher on.

20 THE COURT: Well, I think you can both address
21 a brief memorandum on this point, giving the legislative
22 background, such as may be appropriate.

23 What's next?

24 MR. LA ROSSA: Judge, can we get into the tapes
25 and whose voice? If we can make determinations of who is

1 jbesb

2 on what tapes, it seems to me that is the most logical
3 because a lot of the counsel, until we make a final
4 determination on who are the overhearers or the people who
5 overheard, there is a standing issue. If we get to that
6 first, it would seem to save people time.

7 THE COURT: How do you plan to receive that?
8 I thought that you were going to accept Mr. Bornstein's
9 representation based upon his investigation or the police
10 officer's investigation of the tapes.

11 MR. LA ROSSA: I am still waiting for an
12 on-the-record representation so that I can hear it.

13 MR. BORNSTEIN: Judge, I think I made the
14 representation before.

15 THE COURT: Please. He wants a firm, oral
16 representation. I don't care how many times you said it.
17 Put it here. Put whatever representations you have in mind
18 here.

19 MR. BORNSTEIN: To the best of my knowledge,
20 based on conversations I had with members of the New York
21 City Policy Department --

22 THE COURT: And their investigations.

23 MR. BORNSTEIN: -- and the investigations they
24 performed, the people intercepted are reflected in
25 paragraph 9 of my affidavit of May 24th, which is, none of

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2 these defendants on any wire prior to the Social Club; only
3 defendant Dituri on the Social Club wire; defendants
4 Faranda, Dituri and D'Addario on the G. & D. wire; the
5 defendants Caruso, Faranda, Dituri on the Vacarrelli wire;
6 the defendants Faranda, Caruso, Dituri, D'Addario and
7 Gagliano in the course of the Faranda wire.

8 I might add this, your Honor: I believe that
9 if defendants are contesting the issue of standing, it is
10 their burden to come forward and acknowledge that they have
11 it in some capacity.

12 All of our material has been available to the
13 defense. If any of these people were inadvertently
14 intercepted, we have no idea of it.

15 THE COURT: All right.

16 MR. LA ROSSA: Does that complete it?

17 THE COURT: Yes.

18 MR. LA ROSSA: Well, now I most respectfully
19 submit that I ask the Government to give us a representation
20 with respect to Government's Exhibit 7 that the "Frankie,"
21 who is continually mentioned throughout Government's
22 Exhibit 7 is not Frank Caruso.

23 MR. BORNSTEIN: I have no idea, Judge.

24 MR. LA ROSSA: Well, quite frankly, I want to
25 know if that is Frank Caruso. I have the right to know that.

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2 MR. BORNSTEIN: I don't know. I can find c
3 but I don't know standing here right now, Mr. LaRossa.

4 MR. LA ROSSA: Well, I want a representation
5 that that "Frankie" who is mentioned throughout it is not
6 Frank Caruso.

7 MR. BORNSTEIN: What exhibit are you looking at?

8 MR. LA ROSSA: Exhibit 7.

9 While your Honor is looking at that, I would
10 like the record to indicate that Mr. Caruso is the only
11 defendant whose first name is Frank.

12 MR. BORNSTEIN: Well, Judge, if I may point out,
13 I cannot answer this.

14 What apparently defense counsel is talking
15 about is a conversation that was intercepted in December of
16 1952 in the application for a wiretap onto the G. & D.
17 Luncheonette, on a phone call that was made from the Social
18 Club and the voices that are identified at that point are
19 a male voice and Frankie, and there are two such
20 conversations mentioned.

21 I frankly have no idea who those parties are
22 beyond the name Frankie and I don't think the fact that we
23 have a Frank Caruso here means that this Frankie is
24 necessarily the same individual.

25 MR. LA ROSSA: I contend that is Frank Caruso.

1 jbesb

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2 I contend it is and I contend the Government's position up
3 to a week ago was that it was Frank Caruso on the G. & D.
4 wire and now I would like to know from someone who has
5 knowledge -- and certainly Mr. Bornstein doesn't, he wasn't
6 there -- someone who has knowledge, who knows of this
7 particular tape here and can tell us whether or not they
8 know that that is Frank Caruso or not.

9 THE COURT: Would a voice identification help?

10 MR. BORNSTEIN: It would be disputed. If
11 anything, it seems to be that Mr. LaRossa is conceding it
12 and I frankly don't know.

13 THE COURT: But I say, if Mr. LaRossa is
14 conceding it, are you accepting his concession?

15 MR. BORNSTEIN: If I could confer -- I have
16 several police officers here. If I could confer -- they
17 may be outside or back in my office. If I could check that
18 out, if I was in error in my affidavit, if it is a question
19 of standing --

20 MR. LA ROSSA: It is a question of standing.

21 MR. BORNSTEIN: To the best of my knowledge,
22 he wasn't intercepted.

23 THE COURT: Take time and why don't you do that
24 after we recess in twenty minutes and then find out and
25 give Mr. LaRossa the direct answer to the direct question.

1 jbesb

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2 What else can we do to fill up the balance of
3 the morning?

4 MR. BORNSTEIN: If I may check something, your
5 Honor.

6 (Pause)

7 MR. BORNSTEIN: Your Honor, I need to put in
8 the other boxes and I am not conversant with which box is
9 which. I will need to obtain one of the police officers
10 and I think we can do it now if I can get one of the police
11 officers. One should be outside.

12 THE COURT: All right, surely.

13 (Pause)

14 MR. BORNSTEIN: At this time, your Honor --

15 MR. DE ROSA: Some counsel are not present,
16 your Honor.

17 MR. BORNSTEIN: I'm sorry.

18 MR. LA ROSSA: I think you can go ahead.

19 THE COURT: All right. Court has been in
20 session. They were not excused. You may proceed.

21 MR. BORNSTEIN: We offer a box marked number
22 26 of 73, sealed by Justice Max Bloom, and we offer this
23 as Government's Exhibit 6-A.

24 (Government's Exhibit 6-A for identification
25 received in evidence.)

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2 MR. BORNSTEIN: A box marked 8 of 74, sealed
3 by Justice Bernstein, offered as Government's Exhibit 7-A.

4 (Government's Exhibit 7-A for identification
5 received in evidence.)

6 MR. BORNSTEIN: A box marked 13 of 74, sealed
7 by Justice Schanahanau, offered in evidence as Government's
8 Exhibit 8-A.

9 (Government's Exhibit 8-A for identification
10 received in evidence.)

11 MR. BORNSTEIN: A box marked 18 of 74, sealed
12 by Justice Hughes, offered in evidence as Government's
13 Exhibit 9-A.

14 (Government's Exhibit 9-A for identification
15 received in evidence.)

16 MR. BORNSTEIN: For purposes of the hearing,
17 Judge, to introduce the earlier orders, Government's
18 Exhibit 1 is a copy of the order issued by United States
19 District Judge Harold Tyler on February 7, 1973.

20 I might preface this, your Honor, that we are
21 putting in these exhibits simply because there has been
22 reference to them and we do not intend to concede any
23 standing by introducing them.

24 It is a copy of the order issued by Judge Tyler
25 on February 7 of 1973, which authorized the interception of

1 jbesb

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2 communications transmitted over telephone line and number
3 584-4399, located at 660 Crescent Avenue, Bronx, New York,
4 and over telephone line and number 226-8904, located at
5 80 Thompson Street, New York, New York.

6 We offer it in evidence as Government's
7 Exhibit 1. This is the Crescent Avenue wiretap, as it has
8 been referred to.

9 (Government's Exhibit 1 for identification
10 received in evidence.)

11 MR. BORNSTEIN: Government's Exhibit 2 is a
12 copy of a warrant issued by New York State Supreme Court
13 Justice Burton D. Roberts on September 18, 1973, which
14 authorized the interception of wire communications
15 transmitted over telephone lines and numbers 594-6466 and
16 736-2552.

17 We offer it in evidence as Government's
18 Exhibit 2.

19 (Government's Exhibit 2 for identification
20 received in evidence.)

21 MR. BORNSTEIN: Government's Exhibit 3 is a
22 copy of a warrant issued by Justice Joseph Sullivan of the
23 New York State Supreme Court on October 26, 1973, which
24 authorized the interception of wire communications
25 transmitted over telephone line and number 547-6912.

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2 We offer it in evidence as Government's
3 Exhibit 3.

4 (Government's Exhibit 3 for identification
5 received in evidence.)

6 MR. BORNSTEIN: Government's Exhibit 4 is a
7 copy of the warrant issued by Justice Max Bloom of the New
8 York State Supreme Court on November 12, 1973, which
9 authorized the interception of wire communications
10 transmitted over telephone line and number 654-5907.

11 That has been referred to as the Whalen 2
12 wiretap.

13 (Government's Exhibit 4 for identification
14 received in evidence.)

15 MR. BORNSTEIN: Government's Exhibit 5 is a
16 copy of the warrant issued by Justice Bloom on November 28,
17 1973, which authorized an interception of wire communications
18 transmitted over telephone line and number 823-2318.

19 We have referred to this as the Salomone
20 wiretap.

21 (Government's Exhibit 5 for identification
22 received in evidence.)

23 THE COURT: We will recess now until 1:30.

24 (Luncheon recess)
25

jbesb

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AFTERNOON SESSION

1:30 p.m.

MR. BORNSTEIN: Just by way of a preliminary matter, your Honor, I discussed the matter with police officers during the lunch hour.

Frank Caruso, to their knowledge, was not intercepted during the course of either the Social Club or the G. & D. wiretaps. The Frankie that is alluded to -- I believe it is in Government's Exhibit 7, which is the G. & D. application, an order -- is believed to be Frank Battista.

MR. LA ROSSA: My understanding is now that the Government is making a representation to me that Mr. Caruso was not overheard on the tapes.

THE COURT: They are saying to you that so far as the Government knows, the man was not overheard.

Isn't that right?

MR. BORNSTEIN: Yes, yes.

If I may add, the problem we have, if Frank Caruso hypothetically called up and we are unable to identify his voice, then we don't know it. We would say the burden is on the defense to point it out where he is and then he would have standing.

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2 THE COURT: The important thing about
3 interception is that there has to be an oral interception
4 or some identified basis of saying that that then was used
5 later on.

6 Now, if somebody cut into the wires anonymously
7 and nobody ever recognized that name and he wasn't a target
8 and he was not the possessor of the real estate and there
9 was no use made of it, how can there possibly be any
10 standing?

11 MR. LA ROSSA: Judge, I think you have handled
12 a lot of these cases and I have handled a few. There are
13 line sheets kept by the Police Department.

14 THE COURT: They are saying to you that the
15 line sheets don't disclose Frank Caruso and they are saying
16 to you, as far as they know from anything that was ever
17 transcribed or heard by them, it is not Frank Caruso.

18 MR. LA ROSSA: That is all I want to hear.

19 THE COURT: Is that it?

20 MR. BORNSTEIN: That is exactly it, Judge.

21 With that, we call John Breslin to the stand.
22
23
24
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2 J O H N J. B R E S L I N, called as a

3 witness by the Government, being first duly

4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BORNSTEIN:

7 Q Mr. Breslin, what is your present occupation?

8 A Private practice of law.

9 Q And you have been admitted to the Bar how long,
10 sir?

11 A Thirteen years.

12 Q Was there a time that you were an Assistant
13 District Attorney in and for the County of the Bronx in
14 New York?

15 A Yes.

16 Q From when to when was that, sir?

17 A From February 1964 to February 1976.

18 Q Mr. Breslin, I direct your attention to the
19 time from approximately October of 1973 until the time that
20 you left the District Attorney's Office.

21 Can you tell us what position you held in the
22 Bronx D.A.'s Office during that time?

23 A Yes. I was the Bureau Chief of the Bureau
24 within that office called the Rackets Bureau.

25 Q I direct your attention again a bit more

1 jbesb

Breslin-direct

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2 specifically to the time from December 10, 1973 to January
3 8, 1974.

4 Did the Bronx District Attorney's Office
5 conduct an electronic surveillance at telephone number
6 881-4450, listed to the American Social Club, during that
7 time?

8 A Yes.

9 Q Was that pursuant to an application by the
10 District Attorney of Bronx County?

11 A Yes.

12 Q And was that investigation in which the
13 surveillance was employed conducted under your general
14 supervision?

15 A Yes.

16 Q And the Assistant District Attorney assigned
17 to that matter would have been who, sir?

18 A Actually, at the beginning there were two, Mr.
19 Bornstein. There was Assistant District Attorney Kaplan
20 and Assistant District Attorney Carroll.

21 Q And the surveillance pursuant to that order,
22 which we are referring to here as the Social Club wiretap,
23 terminated on January 8 of 1974, is that correct?

24 A Yes.

25 Q And the tapes from that surveillance were sealed

1 jbesb

Breslin-direct

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2 on February 1 of 1974, is that correct?

3 A Yes.

4 Q Mr. Breslin, can you tell us what accounted
5 for the delay in the sealing of the wiretap tapes made
6 pursuant to the Social Club order?

7 A To the best of my knowledge, the original tapes
8 were produced for the first time in the District Attorney's
9 Office on the 29th day of January 1974, and they were
10 sealed that week, specifically on February 1, 1974.

11 It was my understanding that in the intervening
12 period, they were in the process of being duplicated by the
13 Police Department.

14 Q Now, during that time period, and I am
15 addressing myself to the time from January 8, 1974 until
16 February 1, 1974, was there any other investigative activity
17 by Mr. Carroll or by the Bureau concerning the investigation
18 then going on?

19 A Yes.

20 Q Would you tell us what that was?

21 A Well, it was threefold:

22 Initially, at the expiration of the telephonic
23 interception which was, I believe, January 8th, a proposal
24 was considered whether to make application to continue the
25 telephonic interception over that line at the same address.

jbesb

Breslin-direct

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Secondly, a proposal was made that in lieu of a renewed telephonic interception, that the possibility of placing another type of electronic surveillance --

Q By that, do you mean a bug, sir?

A Euphemistically known as a bug.

The third thing -- well, if I can digress for a moment, as far as the first two things, they were actually prepared and formalized as proposed orders and both of the proposals were rejected.

Q Was application ever made?

A Application was never made. It was an internal rejection in our office.

Based upon that, the investigation continued and an application was drawn to place telephonic intercept equipment over telephone lines in a luncheonette, I think called G. & D. Luncheonette in the Bronx.

Q Mr. Breslin, there was subsequently conducted, and has been stipulated to, an electronic surveillance pursuant to the order of Justice Bernstein, which was signed on January 24 of 1974, which terminated on February 7 of 1974 on telephone number 653-3341 at the G. & D. Luncheonette.

Do you recall that, sir?

A Yes.

Q Was that also supervised by Assistant District

1 jbesb Breslin-direct

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2 Attorney Carroll and then by yourself?

3 A Yes.

4 Q It has also been stipulated here that the tapes
5 from that wiretap, which we referred to as the G. & D.
6 wiretap, were sealed on March 21, 1974.

7 Can you tell us what accounted for the period
8 of time between February 7, 1974 and March 21, 1974, with
9 regard to the sealing of the tapes under the G. & D. order?

10 A I believe the total number of tapes involved
11 pursuant to that intercept order were five in number, if
12 my memory serves me correct.

13 My memory has been refreshed as to the date
14 that they were brought to the District Attorney's Office by
15 the Police Department.

16 Q Do you know the date of that?

17 A I believe it was January 11th. I'm sorry,
18 February, February 11th.

19 Q Would it refresh your recollection, sir, if I
20 told you that it has been stipulated here that the wire
21 terminated, interception terminated on February 7 of 1974?

22 A I believe it was February 11th; I believe.
23 That is the date that they were produced in the District
24 Attorney's office, I believe.

25 Q Now, was there any incident toward the end of

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Breslin-direct

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the G. & D. wiretap that took place?

A Yes.

Q Would you tell us what that was?

A To the best of my recollection, I was first informed someplace around, I would say, February 9th or the 10th, someplace around there, I was informed by the Chief Assistant District Attorney in Bronx County, Mr. Rotker, that the telephonic interception over the telephone line in the G. & D. Luncheonette had terminated, that the police had discontinued the interceptions, and that there was a claim by the police that there had been a leak of that -- or a disclosure of the fact that there was an interception over that telephone line; that Mr. Rotker indicated that that had been brought to his attention a day or two prior to his telling me.

Q Was there an investigation of that matter as a result of this incident?

A Yes.

Q Approximately how long did that internal investigation, we will call it, last?

A I never knew that it ended.

Q What was Mr. Carroll's activity during this time? I am speaking now of the time after February 7, 1974.

jbesb

Bremlin-direct

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2 A There was no activity on the part of Mr. Carroll
3 concerning this investigation or this case, nor was there
4 any activity by any member of the District Attorney's
5 Office outside of Mr. Rotker, and on one instance, myself,
6 concerning this investigation up until approximately the
7 middle of March.

8 Q Did Mr. Carroll continue on the investigation?
9 Did he continue in any capacity?

10 A Not really, no.

11 Q Do you recall whether or not he started any
12 other activity as an Assistant D. A. approximately
13 mid-March?

14 A Yes. As usually happens during a time like
15 this in which there are -- it does get ugly at times. Mr.
16 Carroll was quite concerned. I think this was his first
17 investigation, so I took a trial case away from another
18 assistant and gave it to him and he embarked on his first
19 trial.

20 That would have been the middle of February
21 and he was on trial for two weeks. I believe that was a
22 bribery case, subsequent to which, as soon as he finished
23 that trial, he was admitted to Lenox Hill Hospital.

24 Q And would that have been approximately
25 February 24th that he was admitted to the hospital?

jbesb

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1
2 A I believe so, yes.

3 Q Was anyone else ever assigned to follow up on
4 the investigation on the G. & D. order?

5 A Yes. Towards the middle of March of 1974, when
6 I ascertained that Mr. Carroll would be hospitalized for
7 an extended period of time and would be absent from the
8 office for a few months, I assigned the case to another
9 Assistant District Attorney by the name of Michael Lipman.

10 Q And were the tapes ultimately sealed?

11 A Yes.

12 Q Can you tell us how that came about?

13 A That came about during the entire trial that
14 was turned over to Assistant District Attorney Lipman, with
15 the aim in mind that he would collate the information and
16 present the facts, possibly present the facts to a grand
17 jury.

18 During the time of his preliminary
19 investigation, he discovered, or he informed me that the
20 five tapes from the G. & D. Luncheonette telephonic
21 intercept had not been returned.

22 Q By "returned," sir, you mean judicially sealed?

23 A Had not been judicially returned, sealed, and
24 he said he would do that right away.

25 Q Mr. Breslin, there came a point that there was

1 jbesb Breslin-direct 59

2 a joint investigation or that a joint effort was entered
3 into by both the D.A.'s Office, the Police Department, the
4 Justice Department and the FBI in April of 1974.

5 Do you recall that, sir?

6 A I do.

7 Q At the time that the G. & D. wiretap or prior
8 to the sealing of the G. & D. wiretap, at any time had
9 you conferred with any federal agents regarding the progress
10 of that case?

11 A No.

12 Q Was there any joint investigative activity, to
13 your knowledge, at that time?

14 A Not that I was aware of.

15 Q Was there any tactical reason, sir, that the
16 sealing of either the Social Club or G. & D. wiretaps were
17 delayed?

18 A No.

19 Q There are sealing provisions within the New York
20 State Criminal Procedure Law that were in effect at that
21 time, sir, is that correct?

22 A That's correct.

23 Q Did you, sir, deliberately ignore those
24 provisions?

25 A No, sir.

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Q Are you aware now of a decision entitled, People v. Nicoletti in 34 N.Y. 2d., a decision by the New York Court of Appeals, construing the sealing provisions of the Criminal Procedure Law?

A I am aware of it.

Q Were you aware of the impact of that decision at the time or prior to the sealing of the G. & D. wiretaps?

A No.

Q Was there any investigative benefit obtained by the Bronx District Attorney's Office by the delay in the sealing of the G. & D. wiretap?

A Absolutely not.

Q Or the Social Club wiretap?

A Absolutely not.

MR. BORNSTEIN: I have no further questions.

THE COURT: Mr. Breslin, I would like to have you sum up in capsule form why you say there was this 42-day delay in the sealing of the G. & D. tap. You have expressed it in various responses and now I would like to have the synthesis as to what was the reason for the delay.

THE WITNESS: It would really be hard for me to describe a reason for that at this time, your Honor, outside of speculation.

THE COURT: What are you trying to convey to me

1 jbesb Breslin-direct 61

2 by your testimony that you have given? Summarize that.

3 THE WITNESS: All I am trying to suggest by
4 my testimony, Judge, is that the -- at the time that the
5 tapes from the G. & D. Luncheonette were turned over to the
6 District Attorney's Office, the original tapes, and I
7 believe that date was February 11th, they were returned
8 amidst a climate, an ugly climate which had reared up
9 between the Police Department and the District Attorney's
10 Office, and some other outside agencies, as to what had
11 happened and who had disclosed or prematurely disclosed the
12 existence of the wiretap, and there were accusations and
13 counter-accusations back and forth, and there was an
14 investigation commenced both by the District Attorney's
15 Office and by the Internal Affairs Department of the Police
16 Department.

17 THE COURT: So that what occurred here was
18 that after the tap was terminated on February 7, 1974, a
19 leak was discovered as to the existence of the tap, is that
20 it?

21 THE WITNESS: The leak was discovered prior to
22 that, Judge. That is why the intercept was terminated
23 prematurely, Judge.

24 THE COURT: And the leak was discovered and
25 reported to the Bronx District Attorney's Office?

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Breslin-direct

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2 THE WITNESS: Yes, Judge.

3 THE COURT: As a result, the Bronx District
4 Attorney's Office terminated the tap?

5 THE WITNESS: Actually, the Police Department
6 had terminated the tap prior to even informing us. They
7 had disconnected the machinery.

8 THE COURT: Who discovered the leak? The
9 Police?

10 THE WITNESS: The Police Department.

11 THE COURT: And they reported it to your
12 office, the Bronx District Attorney's Office?

13 THE WITNESS: Yes, Judge.

14 THE COURT: And then charges and countercharges
15 and suspicions reared up?

16 THE WITNESS: Yes, Judge.

17 THE COURT: And in the course of that, the
18 assistant in charge was hospitalized?

19 THE WITNESS: I don't think it was as a result
20 of that.

21 THE COURT: I am not saying as a result of that.
22 I said in the course of it.

23 THE WITNESS: Yes, that's correct.

24 THE COURT: And that assistant would normally
25 have been charged with the problem of sealing the tapes on

1 jbesb

Breslin-direct

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2 the termination?

3 THE WITNESS: Yes, he would have been.

4 THE COURT: That assistant was a young man with
5 his initial experiences in your office in connection
6 with such matters?

7 THE WITNESS: That's correct.

8 THE COURT: After he was hospitalized or
9 possibly even shortly before, the case was reassigned to
10 somebody else?

11 THE WITNESS: Yes, Judge.

12 THE COURT: And the somebody else in the course
13 of carrying out the inquiry as to the leak and the schism
14 that had developed and his own consideration of what other
15 steps to take of an investigative character learned about
16 five tapes that had not been sealed?

17 THE WITNESS: Yes, Judge.

18 THE COURT: And then, after learning about
19 the five tapes, how much time did he take to get them
20 sealed after that?

21 THE WITNESS: My recollection would have been
22 it was done within a day or so.

23 THE COURT: Within a day or so?

24 THE WITNESS: Yes.

25 THE COURT: And the matter was not dropped, the

1 jbesb

Breslin-direct

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2 matter of the leak of the information as to the tap was
3 not dropped but a three-party or four-party investigation
4 was ordered and possibly even undertaken in April of 1974?

5 THE WITNESS: I think it was ordered and
6 undertaken in February, Judge.

7 THE COURT: In February?

8 THE WITNESS: In February.

9 THE COURT: And was that investigation ever
10 carried to a conclusion with any hard evidence as to how it
11 all happened?

12 THE WITNESS: I don't believe so, Judge. I was
13 never informed officially that the investigation had been
14 terminated.

15 I heard unofficially from the Police Department
16 that the result of their investigation had pointed to a
17 representative from the telephone company.

18 THE COURT: And were there any grand jury
19 proceedings that followed?

20 THE WITNESS: Not that I was -- as far as the
21 leak?

22 THE COURT: As far as the leak is concerned.

23 THE WITNESS: Not that I was aware of, Judge.

24 THE COURT: All right.

25 MR. BORNSTEIN: Your Honor, if I might, for your

1 jbesb

Breslin-direct

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2 Honor's consideration, direct your attention to Exhibit 10.

3 In paragraph 8, the very end, there is what the
4 Government was advised was the last conversation of the
5 G. & D. intercept. That would be the end of paragraph 8,
6 subparagraph (d), top half of the page.

7 THE COURT: Is it in your affidavit?

8 MR. BORNSTEIN: In the affidavit of Special
9 Agent Bonavolonta.

10 THE COURT: That reads as follows:

11 "On February 4, 1974, about 2:05 p.m., Michael
12 Dituri received a telephone call at telephone number
13 653-3341 from an unknown male named 'Jimmy.'

14 "The conversation set forth below was the last
15 intercept made during the authroized period of
16 surveillance."

17 Then the conversation follows where Jimmy is
18 quoted as saying that he had met a friend of his and in the
19 trunk from the telephone, he says, "There is about five or
20 six wires tapped in the area so be careful."

21 And Mike says, "You think mine is tapped?"

22 And Jimmy says, "I guess so," and Mike thanked
23 him a lot.

24 Is that what you are referring to?

25 MR. BORNSTEIN: That is it, your Honor.

1 jbesb

Breslin-direct/cross

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2 THE COURT: That was what you referred to as the
3 tip-off of the tap?

4 THE WITNESS: That is what I was instructed by
5 the Police Department. They told me after that conversation
6 there were no conversations over that telephone line.

7 THE COURT: All right.

8 Mr. LaRossa.

9 CROSS-EXAMINATION

10 BY MR. LA ROSSA:

11 Q During the period that you told us about, you
12 were Chief of what has been commonly called the Rackets
13 Bureau, is that correct?

14 A I was.

15 Q And these plants that you are talking about
16 operated basically under the supervision of the Rackets
17 Bureau, isn't that correct?

18 A The plants?

19 Q The plants that intercepted the phone calls.
20 Am I using a word that is not familiar to you?

21 A Were the plants under the supervision of the
22 District Attorney's Office?

23 Q Yes.

24 A I would say not.

25 Q You would say not?

jbesb

Breslin-cross

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A I would say not.

Q Were policemen who were assigned to the District Attorney's Office, did they supervise or work these plants?

A Yes.

Q Were those men who were assigned to supervise the plants directly responsible to you as Chief of the Rackets Bureau?

A They were directly responsible to the police inspector who was running it in the Police Department, who in turn would report to me or the assistant who had the case.

Q And certainly the assistant who had the case was responsible to you as Chief of the Rackets Bureau, is that correct?

A That's correct.

Q So summing this whole thing up, you as Chief of the Rackets Bureau were in effect calling the shots on how the plants were being operated and what would occur, isn't that correct?

A No, that is not correct.

Q It is not true?

A No.

Q Let me ask you this:

Were you familiar during the years that we are

1 jbesb Breslin-cross

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2 talking about with Section 700.50?

3 A I was.

4 Q Which is the section that requires the tapes to
5 be sealed immediately?

6 A Yes, I was familiar with it.

7 Q Were you familiar with it so that you instructed
8 Assistant District Attorneys in the Rackets Bureau who
9 worked under your control and supervision at that time to
10 comply with this section?

11 A Yes.

12 Q Did you instruct police investigators or
13 policemen assigned to the District Attorney's Office who
14 were working in conjunction with the Rackets Bureau with
15 respect to Section 700.50?

16 A Yes.

17 Q So everyone who was working these plants who had
18 anything to do with the District Attorney's Office, you
19 were assured, were fully familiar with 700.50?

20 MR. BORNSTEIN: Objection as to form, your
21 Honor.

22 THE COURT: Well, you have a lawyer on the
23 witness stand and while the form is objectionable, it speeds
24 things up.

25 MR. BORNSTEIN: All right.

1 jbesb

Breslin-cross

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2 Q Is that correct?

3 A I assume that everybody was aware of that, sir,
4 yes.

5 Q Now, let's talk about the G. & D. Luncheonette.
6 Can you tell me, sir, who was the supervising
7 policeman in charge of that plant?

8 A I believe it would have been Captain Dillon or
9 Inspector Heineman.

10 Q Now, during the period that plant was in
11 operation, did you have occasion to speak to the captain
12 about the progress that was occurring at the G. & D.
13 Luncheonette?

14 MR. BORNSTEIN: I object. I don't see the
15 direction of the line.

16 THE COURT: Overruled.

17 A Did I speak to Captain Dillon about the progress
18 of the G. & D.?

19 Q Yes.

20 A No.

21 Q Did you speak to the inspector?

22 A No.

23 Q Did you speak to the Assistant District Attorney,
24 Mr. Carroll, for example, who was in charge of it?

25 A I don't recall.

jbesb

Breslin-cross

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1 Q What I am asking you, sir, is during the period
2 that that tap was in operation, did you speak to anyone in
3 the Rackets Bureau or in the New York City Police
4 Department about the progress of that wiretap?
5

6 A I am fairly certain I did not speak to anyone
7 in the New York City Police Department, but I may have
8 spoken to the assistant who was running the investigation.

9 Q Was there a procedure in the D.A.'s Office or
10 more particularly in the Rackets Bureau whereby you
11 supervised the sealing of the tapes upon the expiration of
12 the court order?

13 A No, there was no practice.

14 Q Do you have any idea of your own knowledge who
15 had possession of those tapes from the time the wiretap was
16 shut down until the time they were sealed?

17 A Are you speaking about G. & D.?

18 Q Yes, sir.

19 A No, I did not.

20 Q Mr. Breslin, isn't it a fact that you instructed
21 the operations in these plants to have a duplicate machine
22 working?

23 MR. BORNSTEIN: Objection, your Honor.

24 THE COURT: Overruled.

25 Let's get all of this information to the degree

1 jbesb

Breslin-cross

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2 that we can and I will sort out what the legal
3 implications are, if any.

4 Q Did you have a duplicate operation going at the
5 same time?

6 A A duplicate machine, Mr. LaRossa?

7 Q Do you understand the question?

8 A No, I don't.

9 Q Were the phone calls being recorded on two
10 separate machines at the same time?

11 A I don't know whether I instructed the Police
12 Department on this particular case, but I did on other
13 occasions and they were instructed not to.

14 Q Not to?

15 A Not to.

16 Q But you are not sure whether it occurred here?

17 A No, I am not.

18 Q Now, sir, the fact that there was an
19 investigation into a leak with respect to the G. & D.
20 Luncheonette, that in no way prohibited you or members of
21 the Police Department from sealing those tapes, did it?

22 A Prohibited?

23 Q Yes.

24 A No, sir.

25 Q And there was no advantage in your keeping those

jbesb

Breslin-cross

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1 tapes in your possession or the Police Department's
2 possession in order to continue that investigation, isn't
3 that right?
4

5 A That's correct.

6 Q They were not assisting or aiding you in that
7 investigation, were they?

8 A They were not.

9 Q And whoever conducted that investigation into
10 a purported leak never asked for the tapes or used them in
11 any respect?

12 A I have no idea of that.

13 Q Isn't that correct, to your knowledge?

14 A To my knowledge? No.

15 Q So in effect, to break down your testimony with
16 respect to the G. & D. tapes, in effect what happened here
17 is somebody just forgot to seal them, isn't that right?

18 A I would assume so.

19 Q And it was based upon somebody's negligence in
20 the office, isn't that correct?

21 A I would assume so.

22 Q With respect to the American Social Club, do
23 you have any idea from the time of the termination of that
24 order, which you told us, I believe, was January 8, 1974,
25 until the date it was sealed, which was February 1, 1974,

1 jbesb Breslin-cross 73

2 in whose possession those tapes were?

3 A The question is, do I have an idea?

4 Q No. Do you have knowledge?

5 A That is a different question. No, I do not.

6 Q Do you have any idea who had access to them
7 during that period?

8 A My information was the Police Department;
9 specifically Captain Dillon had them in his possession at
10 all times.

11 Q Do you know whether or not they were duplicated?

12 A Of my own knowledge, I do not know.

13 Q Do you know whether two machines were being
14 used on that particular plant?

15 MR. BORNSTEIN: Objection, your Honor.

16 THE COURT: Overruled.

17 A Of my own knowledge, I do not.

18 Q By the way, on January 8, 1974, did you as
19 Chief of the Rackets Bureau inform the officers who were in
20 charge of the plant with respect to the American Social Club
21 that they had a duty to immediately bring the tapes into
22 the District Attorney's Office for sealing?

23 A I did not.

24 Q Do you know whether any of your Assistant
25 District Attorneys did?

jbesb

Breslin-cross

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A I do not know that.

3

Q Were they under instructions from you to do so?

4

A Yes.

5

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Q Did you ever ask any of them whether or not they did?

7

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A I believe I asked Mr. Carroll if the tapes had been returned and he indicated to me that the police had asked for time saying that they were having extreme difficulty in duplicating the tapes, that they did not have duplicating equipment to use of their own and that they were going from one agency to another to duplicate the tapes.

13

14

Q Can you tell us when Mr. Carroll had that conversation with you?

15

16

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A As far as the duplicating?

Q Yes, sir.

A I am fairly certain that we had that

conversation on more than one occasion during the whole period of time.

20

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Q So it must have been sometime after the termination that you initially had that conversation?

A I would believe so.

Q Did you see fit at that time to go to the Judge who signed this order and inform him that you could not seal them immediately?

1 jbesb

Breslin-cross

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2 MR. BORNSTEIN: Objection as to which order.

3 MR. LA ROSSA: Referring to the American Social
4 Club.

5 A I did not, no.

6 Q Did you instruct the Assistant District Attorney,
7 Mr. Carroll, to do so?

8 A No, I did not.

9 Q With respect to the G. & D. Luncheonette, sir,
10 did you go to the Judge who signed that order and inform
11 him that the tapes were not sealed?

12 A I did not.

13 Q Did you instruct the Assistant District Attorney
14 who worked for you to do so?

15 A I don't recall whether I did or did not.

16 Q So, am I correct, then, to your knowledge, in
17 both instances neither Judge was informed of the delay until
18 the day that they were sealed?

19 A That would be my impression, Mr. LaRossa.

20 Q Mr. Breslin, will you tell me what occurs when
21 the tapes are sealed?

22 I assume you have had some familiarity with that
23 aspect of it under State law.

24 THE COURT: I don't understand the assumption
25 on top of the question.

1 jbesb

Breslin-cross

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2 Q Have you had any experience in taking tapes to
3 a judge and having them sealed?

4 A No.

5 Q Are you aware of what the procedure is in Bronx
6 County?

7 A I am aware but I believe the procedure varies
8 sometimes, Mr. LaRossa.

9 Q Did you instruct the assistants who worked for
10 you in the Rackets Bureau that each individual tape should
11 be sealed?

12 A Yes.

13 Q And they should be sealed separate and apart
14 from all the other tapes with respect to that particular
15 plant?

16 A I don't know whether on this case, Mr. LaRossa,
17 but subsequently thereto, that was the instruction.

18 Q Was that because you believed the law required
19 that?

20 MR. BORNSTEIN: Objection, your Honor. It is
21 clearly irrelevant.

22 THE COURT: We will take it. If it is
23 irrelevant, I will disregard it.

24 A That was not the primary purpose, Mr. LaRossa.
25 It was to eliminate the -- any controversy that might arise

jbesb

Breslin-cross

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later on as to the existence of the tapes.

Q Do you know whether the tapes in either of the plants we are referring to, the American Social Club or the Luncheonette, were individually sealed or sealed together?

A I don't know of my own knowledge.

Q Have no idea?

A No.

Q With respect to the eavesdropping warrants, did you approve all warrants that came through the Rackets Bureau?

A All eavesdropping warrants?

Q Yes, sir.

A Yes.

Q Did you keep a log of them?

A I kept a copy of them.

Q Did you keep a log of how many were in existence?

A I don't believe so.

Q Can you tell me how many were in existence in January of 1974?

MR. BORNSTEIN: Objection.

THE COURT: Sustained.

MR. LA ROSSA: May I make an offer of proof, your Honor?

THE COURT: You can offer your proof by the

1 jbesb Breslin-cross

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2 questions that you ask.

3 I don't see what concern it is of yours as to
4 what the other business of the Bureau was at that time.

5 MR. LA ROSSA: If it was minimal, your Honor,
6 then the issue of the excuse that was brought --

7 THE COURT: You may ask whether it was minimal
8 or maximal.

9 MR. LA ROSSA: I don't know how I can do that
10 without a number.

11 THE COURT: Was it just a couple or were there
12 a substantial number, as best you recall?

13 THE WITNESS: My recollection is there were two.

14 Q Two tapes in January of 1974?

15 A Two intercept orders running simultaneously.

16 Q Was one of those the American Social Club?

17 A During January?

18 Q Yes.

19 A Yes.

20 Q And was the other G. & D. Luncheonette?

21 MR. BORNSTEIN: Objection on that, your Honor.

22 A No.

23 Q So, in addition to the American Social Club,
24 you had one other tape that was actually being operated in
25 some other instance, right?

- 1 jbesb Breslin-cross 79
- 2 A Yes.
- 3 Q How many Assistant District Attorneys did you
4 have in the Racket Bureau in 1974, January?
- 5 A I think there were seven.
- 6 Q Can you tell me, sir, how many New York City
7 policemen were assigned to the Rackets Bureau in January of
8 1974?
- 9 A None.
- 10 Q None were assigned?
- 11 A No.
- 12 Q Well, how many were assigned to the District
13 Attorney's Office?
- 14 A Mr. LaRossa, there is a squad of police officers
15 that are assigned to the District Attorney's Office that is
16 commonly called the District Attorney's Squad. They did
17 not have anything to do with this particular case that you
18 are inquiring about.
- 19 Q They had nothing to do with the American Social
20 Club tap?
- 21 A They did not.
- 22 Q And they had nothing to do with the G. & D.
23 Luncheonette tap?
- 24 A They did not.
- 25 Q Can you tell me who ran those taps?

jbesb

Breslin-cross

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1 A Those taps were run by -- under the supervisor
2 of Inspector Heineman, who was in charge of citywide
3 enforcement of the gambling laws, and his specific surrogate,
4 Captain Dillon. They were in charge.
5

6 Q Mr. Breslin, just a few more questions, if I
7 may, please.

8 As you sit there now, sir, can you tell me
9 whether or not any of the tapes in either the American Social
10 Club tap or the G. & D. Luncheonette tap were tampered with?

11 A I can tell you that while they were in our
12 custody, sir, they were not tampered with.

13 Q But you can't tell us what occurred prior to the
14 time you received them, is that right?

15 A Of my own knowledge, I cannot.

16 Q Can you tell us, sir, whether the tapes were
17 inventoried?

18 A By whom?

19 Q By anyone.

20 MR. BORNSTEIN: Excuse me. I must press
21 the objection to a certain extent and explain it --

22 THE COURT: Do you mean line?

23 MR. LA ROSSA: No. I mean keep a record of each
24 tape as it was completed or any other way as they went along,
25 catalogue, inventory -- just choosing a word that has no

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jbesb

Breslin-cross

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particular reference to this type of thing.

THE COURT: Well, the difficulty with the choice of words is that you raise a lot of concepts that leave an impenetrable fog.

MR. LA ROSSA: Suppose I try another word.

MR. BORNSTEIN: Your Honor, I am going to strenuously object to any inquiry concerning the custody issues here.

It would be the Government's position -- and, quite frankly, I have witnesses available who, to a greater or lesser extent, can establish the custody, and we are not trying to withhold this from the Court or the defense.

However, given the law of this case as we see it, we do not believe that the Government is under an obligation to come forward and establish, in effect, the chain of custody of these tapes, absent an allegation of some sort of tampering or some sort of specificity.

Our theory is that, if we are right in our proposition, that the sealing requirement does not apply to use, as was made of the evidence in this case, under the heading of the Dunnings approach to all warrants. There would have to be some allegation of tampering imposition upon the Magistrate, something specific to at least bring the issue to a head.

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2 We do so because of the problems this could
3 present in an enormous consumption of judicial time as well
4 as the burden upon the Government if, in each instance, we
5 were required to demonstrate the integrity of any
6 information in any warrant in such a situation.

7 THE COURT: You may be entirely correct in
8 everything you say, and my present impression is that you
9 are right, but that does not mean that the objection need
10 be sustained.

11 You may ask the question.

12 Q Mr. Breslin, I was groping for a word. In
13 effect, what I am trying to ask you is whether or not the
14 District Attorney's Office in any way categorized the tapes
15 so that you kept a record of them, Tape 1, Tape 2, Tape 3,
16 in a specific plant?

17 A The District Attorney's Office did not.

18 Q Did not?

19 A Did not.

20 Q Do you know whether anyone did as the tapes were
21 being made?

22 A Yes. I know the police did.

23 Q Have you seen the record of that inventory?

24 And I am choosing that word with respect to the questions I
25 just asked.

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A I saw some records, Mr. LaRossa.

Q By the way, you told us there was an internal investigation in the New York City Police Department with respect to a leak, is that correct?

A That's correct.

Q When did that occur?

A When did what occur, the leak or the investigation?

Q The investigation.

A My understanding is that Inspector Heineman brought the matter to the Internal Affairs Division of the New York City Police Department prior to even informing us in the District Attorney's Office.

Q Do you know whether that investigation had anything to do with missing tapes?

A It did not, as far as I know.

Q Do you know whether that investigation had anything to do with tampering of tapes?

A It did not, as far as I know.

Q What you are telling us in effect is that it only had to do with a leak or possible leak that occurred?

A That was my understanding, yes.

MR. LA ROSSA: Thank you, Mr. Breslin. Nothing further.

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MR. BORNSTEIN: Your Honor, I am now going to object. Mr. LaRossa is representing Mr. Caruso --

THE COURT: The objection is overruled. There will be no repetition of anything that has gone ahead and the other lawyer may go into new subjects, if relevant and material.

What is your name, sir?

MR. RICHMAN: Murray Richman.

THE COURT: Who do you represent?

MR. RICHMAN: Mr. Dituri.

THE COURT: He is one of those that I have said has standing, is that correct?

MR. BORNSTEIN: That's correct, your Honor.

CROSS-EXAMINATION

BY MR. RICHMAN:

Q Mr. Breslin, you had indicated on cross-examination by Mr. LaRossa that during this period of time, there was one other wiretap in your office.

A To the best of my recollection, Mr. Richman.

Q Is it not a fact that that wiretap concerned People versus DiRienzo?

MR. BORNSTEIN: Objection.

THE COURT: Sustained.

Q Isn't it a fact, Mr. Breslin, that during this

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2 period of time -- I refer now to 1973-1974, prior to June
3 of 1974 -- that it was standard operating procedure in your
4 office for any wiretaps emanating from your office to use
5 two machines?

6 MR. BORNSTEIN: Objection.

7 THE COURT: Sustained.

8 Q Mr. Breslin, isn't it a fact further --

9 THE COURT: Were you present when Mr. LaRossa
10 was asking the questions?

11 MR. RICHMAN: Yes, your Honor.

12 THE COURT: I trust you were listening to the
13 lucid examination.

14 MR. RICHMAN: I was. I have other information
15 concerning this same period of time.

16 THE COURT: Then go over it on your affirmative
17 side but don't repeat the areas covered by this witness
18 already.

19 MR. RICHMAN: Very well, your Honor.

20 Q Directing your attention now to the time --

21 THE COURT: It may be that the Government's
22 investigation will be furthered by cross-examination here,
23 the one that was aborted back in April of 1974.

24 MR. RICHMAN: No relation, your Honor; only a
25 relation to the collateral case.

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THE COURT: I am just listening carefully. You may have the information that they are seeking.

MR. RICHMAN: On the contrary, your Honor. I don't believe it is even suggested by the Government that they --

Q During the period of time that Mr. Carroll was in charge of this case, there came a point sometime in February that Mr. Carroll entered the hospital?

A That's correct.

Q And at that time, Mr. Lipman was assigned to handle that case?

A Not immediately but within weeks.

Q Within a week or two?

A I would say so.

Q And could you tell us, to the best of your ability, what date Mr. Carroll entered the hospital?

A I do not know. It was suggested by Mr. Bornstein that it was February 24th. My recollection was it was towards the end of February, Mr. Richman.

Q And you say Mr. Lipman was assigned within a week or two after that?

A My best estimation would be it would have been around the second week in March, Mr. Richman, someplace in there.

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2 Q Are you suggesting three weeks after Mr. Carroll
3 entered the hospital a new Assistant D. A. was assigned?

4 A Two or three weeks.

5 Q And no one was in charge of that case during
6 that period?

7 A That's correct.

8 Q This case or investigation revolved specifically
9 around wiretaps?

10 A That's right.

11 Q So if Mr. Lipman became the Assistant District
12 Attorney in charge of this case in the second week of
13 March, he would have been aware that this was a wiretap
14 case?

15 A I would assume he would have been.

16 Q Yet he did not make application to seal this
17 still for another week thereafter or two weeks thereafter?

18 A You are referring to the G. & D. five tapes?

19 Q That's correct.

20 A I don't believe he found out about it, Mr.
21 Richman, until shortly before he returned them.

22 Q I'm sorry?

23 A I don't believe he discovered that they had not
24 been returned until a day or two prior to his actually
25 bringing them and having them sealed.

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Q And how did he discover it, if you know?

A I don't know, Mr. Richman.

Q Were they laying around the office?

A I believe, if you are asking my opinion, Mr. Richman, I believe what happened is that in collating the information from the prior wiretaps and conducting interviews with the officers who had run those wiretaps, he discovered the existence of the last taps, specifically the G. & D., because that had, for all intents and purposes, as far as we were concerned, that had been eliminated from our eventual or possible presentation to the grand jury.

My opinion or my recollection during that period of time was that we did not know that there were any incriminating conversations over that telephonic intercept until Mr. Lipman discovered that they had not been returned.

He discovered that in conversations with the officers that there had been at least one or two or three days of pertinent, what you would call pertinent conversation that could be utilized and it was at that time, I think, when he went back to the records and he discovered that they had not been returned, he sought them out and returned them to the Court and had them sealed.

That would be my recollection, Mr. Richman.

Q Now, specifically you said he discovered that

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2 there was pertinent conversations on these tapes.

3 A He was told that there were, Mr. Richman.

4 Q Do you know when he was told and who told him?

5 A It would have been the officers who had
6 monitored the particular intercept. At this time, I don't
7 recall who they were.8 Q Were there transcripts of these tapes made in
9 the interim?

10 A The interim from when to when?

11 Q From the date the wiretap was discontinued,
12 specifically on February 7, 1974, until they were returned,
13 March 21, 1974.14 A My recollection, Mr. Richman, is that there
15 were -- you could probably count them on one hand --
16 transcripts that we had that were supplied to us.

17 Q That were supplied to you?

18 A Transcripts?

19 Q Yes.

20 A At the time that the case was presented to the
21 grand jury, there were transcripts presented to us, which
22 my recollection is you could count them on one hand.23 At that time they were assigned to the office
24 for the purpose of transcription.

25 Q Can you tell us when these transcriptions were

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2 made, to the best of your knowledge?

3 A Which ones?

4 Q G. & D. and/or the Social Club.

5 A I don't know.

6 MR. BORNSTEIN: I will object to the line going
7 any further.

8 THE COURT: You may ask the last question.

9 Q Please answer it.

10 A I don't know, Mr. Richman.

11 Q But there were transcripts?

12 A If you are asking me specifically whether there
13 were transcripts of any conversation on the G. & D., the
14 only transcript that I ever actually saw myself, Mr.
15 Richman, was that conversation that the Judge read into the
16 record.

17 MR. BORNSTEIN: Objection.

18 A I saw that. I never saw any others. I don't
19 know if there were any others.

20 Q The practice in the District Attorney's Office
21 in Bronx County prior to Nicoletti was not to concern
22 itself too seriously with sealing, isn't that a fact?

23 MR. BORNSTEIN: Objection.

24 THE COURT: Sustained.

25 Q During December of 1973 through, shall we say,

1 jbesb Breslin-cross 91
2 June of 1974, isn't it a fact that no other tapes were
3 sealed on any case in Bronx County?
4 MR. BORNSTEIN: Objection.
5 THE COURT: Sustained.
6 MR. RICHMAN: Your Honor, may I make an offer
7 of proof on that issue?
8 THE COURT: You just offered it by asking the
9 question and the witness has told you there is one other
10 outstanding order.
11 What are you trying to tell me? That in that
12 other case there was no sealing?
13 MR. RICHMAN: That's correct.
14 THE COURT: What does it show with respect to
15 this case?
16 MR. RICHMAN: It shows the practice of the
17 District Attorney's Office at that time.
18 THE COURT: It doesn't show anything at all.
19 The problem of the explanation for the delay here
20 is indigenous to the delay here, not there.
21 MR. RICHMAN: Thank you, your Honor. No
22 further questions.
23 THE COURT: Anything else?
24 MR. DIRENZO: If your Honor please, do I have a
25 standing by your standard? I represent the defendant --

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2 THE COURT: Do you feel compelled to ask some
3 questions?

4 MR. DIRENZO: Only a few.

5 MR. BORNSTEIN: I object on standing, Judge.

6 THE COURT: You don't have much standing but
7 maybe I can find something out by what questions you ask and
8 I am interested in finding out everything I can.

9 What do you want to know?

10 MR. DIRENZO: Well, do you want me to state it
11 or ask the questions?

12 THE COURT: No. Ask the questions. We will
13 listen to your questions and the objections as they are made.

14 MR. DIRENZO: Might I first note an objection
15 to your Honor's ruling with reference to the question that
16 Mr. Richman attempted to put to this witness?

17 THE COURT: You just go ahead and ask the
18 questions and if you have a good objection and you have no
19 standing, you have no standing to make a good objection.

20 Go ahead.

21 MR. DIRENZO: That is why I asked, your Honor,
22 if I had standing.

23 CROSS-EXAMINATION

24 BY MR. DIRENZO:

25 Q Mr. Breslin, if you know, these interceptions

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2 were electrically monitored, is that correct, on a tape?

3 A We are referring to the two, the Social Club
4 and G. & D.?

5 Q Correct.

6 A My understanding is they were, yes, sir.

7 Q Now, in addition to being electrically
8 monitored, do you know whether the police officers covering
9 those particular plants made written notes with reference
10 to that which was said or heard on those tapes?

11 A My understanding is they did, sir.

12 Q Now, can you tell us whether you ever received
13 any of those notes?

14 MR. BORNSTEIN: Objection.

15 THE COURT: Well, that certainly doesn't go to
16 the question of sealing. It may raise some other
17 interesting possibilities.

18 You may answer that.

19 Did you ever get the policemen's notes?

20 A I never did but the Assistant District Attorney
21 who had the case and eventually another assistant had the
22 case, my understanding is they did receive those notes from
23 the police officer.

24 Q Now, with reference to a particular
25 interception order, did you keep a record of the dates on

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2 which an order was obtained authorizing the interception
3 on a given number?

4 MR. BORNSTEIN: Objection, unless we can get
5 it specified, Judge.

6 THE COURT: He wants to know whether you kept a
7 record of what was outstanding.

8 A At that time I did not, no.

9 Q So that you can't tell us after you had
10 obtained or someone in your office had obtained an order
11 what the termination date on that order would be, isn't
12 that correct?

13 THE COURT: I don't understand you. They had
14 the order. Why couldn't they read it?

15 MR. DIRENZO: He said he didn't keep a record
16 of it.

17 THE COURT: How many records do you need of an
18 order, other than the order itself?

19 MR. DIRENZO: Let me put this question, then.

20 Q Isn't it a fact that the practice in the Bronx
21 District Attorney's Office and in the Bronx Supreme Court
22 is that the Judge who issues the order keeps a record of
23 every order that he signs with reference to an interception?

24 MR. BORNSTEIN: Objection.

25 THE COURT: Sustained.

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2 Q Can you tell us whether Judge Bernstein kept a

3 duplicate original of the order which he issued?

4 MR. BORNSTEIN: Objection.

5 THE COURT: Sustained.

6 MR. DIRENZO: If I were to put the same

7 questions to him with reference to Judge Schananau --

8 THE COURT: You could not put the same questions

9 to him. You would have to ask a different name.

10 MR. DIRENZO: Of course.

11 Q Do you know whether Judge Bernstein kept a

12 duplicate copy of the order which he issued?

13 MR. BORNSTEIN: Objection.

14 THE COURT: Sustained.

15 Q Do you know whether Judge Schananau kept a

16 duplicate original of the order which he issued?

17 MR. BORNSTEIN: Objection.

18 THE COURT: Are you functioning for the Special

19 Prosecutor, by any chance?

20 MR. DIRENZO: I never intended to.

21 THE COURT: We are not interested in that line

22 of questions.

23 MR. DIRENZO: I just wanted to cover all of

24 these.

25 THE COURT: I know. Go ahead.

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1 MR. DIRENZO: If you ask me to stop, I will
2
3 stop.

4 THE COURT: I want you to stop on the last
5 question.

6 Q If I were to put the same question to you with
7 respect to Mr. Justice Roberts, Mr. Justice Max Bloom and
8 the two orders of Justice Bloom thereafter, would the
9 answer be the same?

10 MR. BORNSTEIN: Objection.

11 THE COURT: The practice of the Justice is of
12 no concern in this proceeding.

13 MR. DIRENZO: I thought the statute mandated
14 it, unless I read it incorrectly.

15 THE COURT: It has nothing to do with the
16 witness and I won't let him tell you what the Judges do or
17 what they thought themselves or what he thought of it.

18 Q Can you tell us what your practice as a Bureau
19 Chief would be in connection with sealing any given tape?

20 MR. BORNSTEIN: Objection.

21 THE COURT: I think that is covered, Mr.
22 Direnzo.

23 Q Had you ever, as Bureau Chief, prior to
24 obtaining orders in this case, ever made an application to
25 seal a tape?

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MR. BORNSTEIN: Objection.

THE COURT: Sustained.

Q Can you tell us now, if you, as Bureau Chief of the Rackets Bureau, ever went to a judge prior to obtaining orders in these cases, ever made an application to seal a tape?

MR. BORNSTEIN: Objection.

THE COURT: Sustained.

Q You did in fact know about each of these interceptions, is that correct?

A I did.

MR. BORNSTEIN: Objection.

THE COURT: It has been covered.

Mr. Direnzo, I really don't think that your client has any standing and I thought that you had some information, some questions that would help illuminate the situation for me and, frankly, I don't think that this is doing any more than raising a lot of objectionable inquiries.

MR. DIRENZO: Thank you, your Honor.

I have no further questions.

THE COURT: Any redirect?

MR. BORNSTEIN: None.

THE COURT: Thank you very much. You're excused.

(Witness excused.)

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2 MR. BORNSTEIN: May I ask for a stipulation
3 from counsel based upon Mr. Breslin's testimony regarding
4 the delivery dates of the tapes to the District Attorney's
5 Office, specifically, February 11th and January --

6 MR. LA ROSSA: We have discussed it with you,
7 haven't we? We have the man's testimony on the stand.

8 You want us to stipulate that it is true?

9 MR. BORNSTEIN: Well, it is hearsay from this
10 witness.

11 THE COURT: Well, you accept whatever the
12 testimony is; you are not contesting that point, isn't that
13 correct?

14 MR. LA ROSSA: That's right.

15 THE COURT: Isn't that right?

16 MR. LA ROSSA: Yes.

17 THE COURT: All right.

18 MR. BORNSTEIN: Your Honor, the Government calls
19 Special Agent Bonavolonta.

20 J U L E S B O N A V O L O N T A, called as a
21 witness by the Government, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BORNSTEIN:

25 Q What is your occupation, Mr. Bonavolonta?

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2 A Special Agent, Federal Bureau of Investigation.

3 Q Mr. Bonavolonta, I am going to ask you to keep
4 your voice up so all members at the counsel table can hear
5 you.

6 How long have you been a special agent, sir?

7 A Approximately eight years.

8 Q Agent Bonavolonta, were you the case agent of
9 an investigation that was conducted jointly between the
10 Bronx District Attorney's Office, the New York City Police
11 Department, the FBI and the Justice Department starting
12 approximately mid-April of 1974 of a gambling operation in
13 Bronx County?

14 A Yes, I was.

15 Q Agent Bonavolonta, I direct your attention to
16 Government's Exhibit 10, 11 and 12 before you and also
17 Government's Exhibit 14.

18 Do you have copies, yourself, of those
19 documents?

20 A 10, 11 and 12, I do.

21 Q 14, sir?

22 A Not 14, no.

23 Q With regard to Government's Exhibit 10, 11 and
24 12, those contain your affidavits in support of certain
25 eavesdrop orders, is that correct, Agent?

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2 A That's correct.

3 Q And specifically were the eavesdrop orders that
4 were ultimately issued on the premises of Mike's Expresso,
5 the Rosewood Luncheonette and the Renewal of the Rosewood
6 Luncheonette, were those three wiretaps employed during the
7 course of the gambling investigation that we discussed just
8 a few moments ago?

9 A Yes.

10 Q Specifically, sir, I direct your attention to
11 your affidavit supporting Government's Exhibit 10,
12 paragraphs 8 and 9.

13 Paragraph 8, is it not true, contains certain
14 information obtained by you from the New York City Police
15 Department which alludes to an earlier wiretap conducted
16 by them which we are referring to as the G. & D. wiretap;
17 is that correct?

18 A Yes.

19 Q Now, I also direct your attention to paragraph 9.
20 That paragraph, does it not, contains information obtained
21 by you concerning information obtained by the Police
22 Department pursuant to what we are calling the Social Club
23 wiretap; is that correct?

24 A Yes.

25 Q Agent, the investigative efforts concerning that

1 jbesb Bonavolonta-direct 101
2 gambling operation merged in approximately mid-April 1974,
3 is that correct?

4 A Yes.

5 Q Prior to that time, the FBI had also been
6 investigating this matter, is that correct?

7 A That's correct.

8 Q Now, when you obtained the information you set
9 forth in paragraphs 8 and 9, can you tell this Court --

10 A Excuse me, if I may. Paragraph 9, this is the
11 wire from Lou's Espresso.

12 Q My error.

13 Directing your attention to paragraph 14 of the
14 same affidavit, page 20, that paragraph contains information
15 you obtained that derived, to your knowledge, from the
16 American Social Club wiretap, is that correct?

17 A That's correct.

18 Q Would you tell us how you obtained the
19 information that you related or stated in paragraph 8 and
20 paragraph 14? What was your source?

21 A My source was twofold. Mainly it was from the
22 line sheets of these transcripts provided me by the Police
23 Department and, in small part, conversations with several
24 members of the Police Department over the telephone.

25 Q With respect to either the Social Club wiretap

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2 or the G. & D. wiretap, did you personally listen to any
3 tapes?

4 A No, I did not.

5 Q Did you or any agent of the Government, to your
6 knowledge, have anything to do with the sealing or the
7 timeliness of sealing of what we described as the Social
8 Club and G. & D. wiretaps?

9 A No, we did not.

10 Q As the case agent, was there any benefit
11 obtained by the Bureau, by the Government, by the delay in
12 the sealing of either the American Social Club or the
13 G. & D. wiretaps?

14 MR. DIRENZO: Objection, your Honor.

15 MR. LA ROSSA: Objection.

16 THE COURT: Objection overruled.

17 That doesn't mean the answer is controlling on
18 me but he may give an answer.

19 Q When you obtained that information concerning
20 that which you relate in paragraphs 8 and 14, did you know
21 whether or not those two State wiretaps had in fact been
22 sealed as of that time?

23 A No, I did not.

24 Q Did any attorney for the Government review, to
25 your knowledge, the State wiretap, those State wiretaps when

1 jbesb

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2 you obtained that information and included it in your
3 affidavit?

4 MR. DIRENZO: Objection, your Honor.

5 THE COURT: Overruled.

6 A Reviewed the affidavits?

7 Q That's correct.

8 A Yes, to my knowledge, yes.

9 Q Do you know what attorney did that?

10 A Yes, I do.

11 Q Who was that?

12 A That was you.

13 Q It has been stipulated that Government's 10,
14 the order of Judge Ward, was issued on July 11th and that
15 execution pursuant to that order terminated on July 30th
16 and, further, that it was sealed on August 1st of 1974.

17 Agent, can you tell us what the procedure you
18 followed was with regard to the preparation of tapes for
19 sealing at the end of a wiretap in the course of this
20 investigation?

21 A Yes. Upon termination of the electronic
22 surveillance, I would personally assemble all the tapes and
23 review them for proper identifying markings to include the
24 number assigned, the agent who monitored, the fact that he
25 initialed it, it was dated, and I placed them into a

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1 cardboard carton, cardboard box, and should one tape have
2 been -- for instance, two tapes were supposedly expected
3 for one day. If there was only one, I would seek out the
4 agent and ask him where the other tape was and he would then
5 inform me that there was a blank tape, there was no
6 monitoring and I would assure myself of all possibilities
7 and then I would notify you and tell you that I was ready to
8 have them sealed.
9

10 Q Now, I direct your attention to the second
11 wiretap, Government's Exhibit 11, the Rosewood surveillance
12 which was issued on August 15th and terminated on September
13 4 of 1974, and was sealed on September 10 of 1974.

14 Can you tell us what your procedure was and what
15 was done in the interim by you between September 4 and
16 September 10, 1974, with regard to the preparation of
17 sealing and the sealing of the tapes?

18 A My procedure was the same.

19 Q Was there any other investigative activity
20 involving this investigation during that time period?

21 A Yes, there was. We were -- I was in the process
22 of developing an extension, probable cause observations for
23 an extension of this electronic surveillance at the time.

24 Q Did you and I confer regarding that?

25 A Yes, we did.

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Q Were men under your supervision actively engaged in conducting surveillances?

A es, they were.

Q And approximately when was the Rosewood wiretap ready, on your end, for sealing?

A Two days.

MR. BORNSTEIN: May I ask the Court to take judicial notice of the fact that September 4th was a Wednesday?

Q Are you saying, then, that it was ready on Friday?

A Yes.

Q And it was ultimately sealed on the following Tuesday, is that correct?

A The 10th, yes.

Q I direct your attention to the third wiretap, the Rosewood Renewal, which was issued on September 24th and was terminated on October 13th and sealed on October 23rd.

On October 13th, when the wiretap ended, did the Bureau or agents under your supervision participate in any other investigative activity concerning this investigation?

A Yes, they did.

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Q Could you tell us what that entailed?

A Yes. On October 13th, we executed search warrants of certain premises and certain individuals.

Q And were all the search warrants executed on October 13th?

A No, they were not.

Q Was one of the search warrants executed on October 16th?

A Yes.

Q Were returns made on those various warrants during the week of October 14, 1974?

A Yes, there were.

Q Were you also engaged in any other activity beyond the execution on the warrants and the return on the warrants?

A Yes. I was preparing the tapes for sealing.

Q Was there any evaluation being conducted of evidence seized pursuant to the search warrants?

A Yes, there was.

Q And is that primarily your responsibility as case agent with the FBI on a given case?

A Yes.

Q Is it also the case agent's responsibility primarily to make a return on the wiretaps?

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2 A Yes, sir.

3 Q When, to your recollection, did the tapes
4 become ready for sealing on your end?

5 A Four or five days.

6 Q By four or five days, you are referring to
7 Thursday or Friday of that week?

8 A Yes, I am.

9 Q What did you do at that point, sir?

10 A I notified you.

11 Q And they were ultimately sealed the following
12 Wednesday, is that correct, the 13th?

13 A I believe so.

14 Q Between September 4th and September 10th and
15 in the period between October 13 and October 23, 1974, was
16 there any tactical reason or benefit to delay the sealing
17 of the tapes, federally?

18 A No.

19 Q Was any such benefit obtained?

20 A No.

21 Q Did you and I converse during those times
22 regarding the need to seal those tapes?

23 A Yes, we did.

24 MR. BORNSTEIN: No further questions, your
25 Honor.

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2 MR. LA ROSSA: Can we take a five-minute
3 recess, please?

4 MR. BORNSTEIN: May I ask one further question,
5 if I might, just for smoothness of preparation?

6 I have conferred with counsel and they
7 indicated to me that they would take my oral
8 representation between the time Mr. Bonavolonta was ready
9 and the time we got to the court.

10 It was from the time Mr. Bonavolonta called me
11 regarding the second wiretap that -- I believe would have
12 been a Friday -- I know I conferred with Judge Owen either
13 that Friday or the following Monday, and we returned on
14 Tuesday.

15 It was simply a question of making the
16 appointment as soon as we could and timing Mr. Bonavolonta's
17 appearance in accord with Judge Owen's calendar.

18 I know by the end of the week, I conversed with
19 Judge Motley and I know that I belatedly returned a progress
20 report on October 18th. I don't recall if it was on that
21 Friday or the following Monday that I advised her we were
22 prepared to make a return on the tapes and the first
23 available date was the 23rd, your Honor.

24 THE COURT: Is that satisfactory, gentlemen?

25 MR. LA ROSSA: It is, yes.

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THE COURT: All right, five-minute recess.

(Recess)

CROSS-EXAMINATION

BY MR. LA ROSSA:

Q Mr. Bonavolonta, you have been the case agent on this case since April 1974, am I correct?

A Yes, I was.

Q Am I correct that you were the affiant in almost every one of those applications that is before you that was submitted to a Federal judge?

A Yes.

Q And you read each of those affidavits, did you not?

A Yes.

Q You read them carefully before you signed them?

A Yes, I did.

Q You swore to the truth of them?

A Yes, I did.

Q Do you reaffirm, as you sit there now, the truth of each of those affidavits?

A Yes, I do.

Q Now, there came a time, sir, when you submitted a search warrant to a Federal judge, is that correct?

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1 A Yes, it is.

2 Q Attached to that search warrant was an
3 affidavit that you signed and executed, is that correct?

4 A That's correct.

5 Q Would you get that application and put it in
6 front of you, please.

7 Can you tell me, sir, the date that you signed
8 that affidavit?

9 I have a conformed copy here that counsel for
10 the Government has shown me which says October 11, 1974.

11 Will you accept that date?

12 A Yes.

13 Q Now, that affidavit is rather long, is it not?

14 A Yes, it is.

15 Q And I assume that the facts that are contained
16 in that affidavit were given by you to some Assistant
17 United States Attorney?

18 A That's correct.

19 Q Which Assistant United States Attorney?

20 A Assistant Attorney Bornstein.

21 Q If you signed that on the 11th, when did you go
22 over the facts with Mr. Bornstein?

23 A The 9th, the 10th. I was continuously reviewing
24 that.
25

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2 Q A few days before the 11th, would it be fair
3 to say?

4 A Yes.

5 Q While this was being prepared, you were around
6 the office at that time?

7 A Yes.

8 Q Then when it was prepared, did you go over it
9 with Mr. Bornstein?

10 A Yes.

11 Q And verify all the facts in it?

12 A Yes.

13 Q Would you please go over this rather quickly.

14 You do in paragraph 2 say that you have
15 participated in twenty investigations of illegal gambling
16 businesses, is that correct?

17 A That's correct.

18 Q And that you have some experience in this?

19 A Yes.

20 Q I am going to paraphrase it, and tell me if I am
21 paraphrasing correctly.

22 You say that since April 1974, there began a
23 joint investigation between you and the New York City Police
24 Department with respect to illegal gambling, is that correct?

25 A That's correct.

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2 Q And that you became rather familiar with that
3 investigation based upon it?

4 A That's correct.

5 Q And that you believed that certain men had been
6 conducting an illegal gambling business?

7 A That's correct.

8 Q Now, paragraph B of page 2, sir, do you say
9 that you believe that evidence of the commission of
10 crimes, contraband, including records, enterprises, papers,
11 slips, devices, et cetera, are on the premises?

12 A That's correct.

13 Q Do you say further on that you believe this
14 based on your experience?

15 A That's correct.

16 Q Because you say in paragraph 4, do you not, that
17 gambling operations work in a certain way and from your
18 experience, the records of these operations are found in the
19 place where the bets are controlled, isn't that right?

20 A Yes, sir.

21 Q Am I paraphrasing that correctly?

22 A Right.

23 Q Then you talk about wire rooms, is that right?

24 A Right.

25 Q Wire rooms are the rooms that have the phone

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2 which was the subject of these plants that we talked about,
3 isn't that right?

4 A Yes.

5 Q Now, let's go over the paragraphs together from
6 that point on.

7 Will you tell me, sir, when you found out the
8 information in paragraph number 7? And I am not asking you
9 for the specific date, naturally.

10 By the way, before you do that, let me ask you:
11 Did you file any reports with respect to this case between
12 September 15th and October 10th?

13 A 1974?

14 Q Yes, sir.

15 A I can't recall.

16 Q Did you check --

17 A If I would go through the file, I could tell
18 you.

19 Q You didn't check the file before you testified?

20 A No.

21 Q Do you have any recollection of filing any?

22 A Between September 10th and October 13th?

23 Q Yes, sir.

24 A I can't recall.

25 Q I am saying thirty days before you prepared the

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1 search warrant.

2 A I can't recall.

3 Q Let's go back over paragraph 7.

4 When did you get the information in paragraph 7?

5 MR. BORNSTEIN: Judge, I will object to the line.

6 MR. LA ROSSA: I am adopting this witness as my
7 own witness.

8 THE COURT: He may answer.

9 Q I don't expect you to give me the exact date,
10 sir.

11 A This information was developed through the
12 investigation of the case.

13 Q Can you tell me whether that investigation gave
14 you this material by July 1974?

15 A This material?

16 Q Yes, sir.

17 A Part of it, not all of it.

18 Q Was it all available to you as late as September
19 1, 1974; would you say that?

20 A Yes.

21 Q Let's go to paragraph 8. Am I correct in
22 saying that all of that information in paragraph 8 was known
23 to you by the end of June 1974, since it refers to
24 observations during the months of April, May and June?
25

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2 A Yes.

3 Q And am I correct in saying, sir, that the
4 information in paragraph 9 was known by you on June 14, 1974
5 or thereabouts, give or take a day?

6 A Yes.

7 Q Am I correct that the information in paragraph 10
8 was known to you on June 18, 1974?

9 A Yes.

10 Q And am I correct that the information in
11 paragraph 11 was known to you by early September 1974?

12 A Yes.

13 Q When I say "early September," I am talking about
14 the 1st of September.

15 A Yes.

16 Q Referring you to paragraph 12, did you know that
17 by September 1, 1974?

18 A Yes.

19 Q 13, did you know that by September 1, 1974?

20 A Yes.

21 Q 14, did you know that by September 1, 1974?

22 A Yes.

23 Q The same reply to paragraph 15?

24 A What is the date on that, September 1st?

25 Q September 1, 1974.

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1 A I am not exactly certain of the date I
2 received this information.

3 Q Can you check your records and tell me?

4 A Yes. I don't have them here, though.

5 Q So let's make a little check on paragraph 15,
6 okay?

7 16, did you know that by September 1, 1974?

8 A Yes.

9 Q Paragraph 17 refers to over fifty surveillances.

10 A Correct.

11 Q It refers to the period from July 20, 1974 to
12 October 8, 1974, is that right?

13 A Correct.

14 Q Will you tell me when most of those
15 surveillances occurred?

16 A You mean what time of day?

17 Q No, sir. What period? How many were in July?

18 A I will have to pull our surveillance logs and
19 bring them down here. I could tell you exactly.

20 Q What is your best recollection? Were there
21 surveillances that were successful during the month of July?

22 MR. BORNSTEIN: Objection on characterization
23 as successful, your Honor.

24 THE COURT: What do you mean by that?

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MR. LA ROSSA: Successful in that he goes further on what they show. He says, "During these surveillances, Caruso and D'Addario" --

THE COURT: Useful?

Q During the month of July 1974, did you observe Mr. Caruso and D'Addario within the premises to the luncheonette?

A That's correct.

Q Did you observe Mr. Caruso and D'Addario during the month of August 1974 within the luncheonette?

A Did I personally observe them?

Q No. You or any of the other agents?

A Yes.

Q Can you tell me how many times in August?

A Not exactly.

Q More than one?

A More than one.

Q In fact, the great majority of them were in August, weren't they?

A I can't say as compared to July.

Q Certainly by August 30th, you certainly knew that your observations had shown, am I correct, Caruso and D'Addario observed at the premises on almost a daily basis?

A Correct.

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2 Q And if I took you to September 15, 1974, the
3 observations would have disclosed more surveillances of both
4 these individuals at the luncheonette on a daily basis, is
5 that correct?

6 A Correct.

7 Q Did you know the information in paragraph 18
8 on September 15, 1974?

9 A Correct.

10 Q Did you know the information in paragraph 19
11 on September 15, 1974?

12 A Yes.

13 Q Did you know the information in paragraph 20
14 on September 15, 1974?

15 A Yes.

16 Q Page 8 is entitled, "Communications Between
17 Participants," is that correct?

18 A Correct.

19 Q And it talks about an order that Judge Richard
20 Owen, United States District Judge, signed and
21 interceptions as a result thereof, am I right?

22 A Correct.

23 Q Referring you to paragraph A of page 21, you
24 certainly knew that information by September 15, 1974, is
25 that correct?

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2 A Correct.

3 Q And the same applies to B, does it not?

4 A Correct.

5 Q And the same applies to C, does it not?

6 A Correct.

7 Q The same applies to D, both 1 and 2, is that

8 correct?

9 A Correct.

10 Q And it certainly applies to E, is that correct?

11 A Correct.

12 Q And it certainly applies to F, does it not?

13 A Correct.

14 Q And paragraph number 22 refers to an order

15 entered on September 24, 1974, is that right?

16 A Yes.

17 Q So certainly you didn't know any of the

18 information that occurs in paragraph 22 before September 15,

19 is that right?

20 A Will you repeat that?

21 Q What I am saying, in effect, is none of the

22 information in paragraph 22 was known to you before September

23 15th, is that right?

24 A That's correct.

25 Q Let's go to paragraph 23. That refers to

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2 observations after September 15, 1974, is that right?

3 A Paragraph 23?

4 Q Yes.

5 A Would you repeat the question?

6 Q That refers to observations and matters that
7 occurred subsequent to, after September 15, 1974, is that
8 right?

9 A This is about identification of the individuals
10 in the operation.

11 Q But it occurred after September 15, 1974, isn't
12 that correct?

13 A Yes.

14 Q Do you remember signing an application for the
15 interception of wire and oral communications in August
16 1974?

17 A Yes.

18 Q Will you take Exhibit 11.

19 You signed an affidavit with respect to that
20 application on 15 August 1974, correct?

21 A Correct.

22 Q Is the search of a premises a normal
23 investigative technique?

24 MR. BORNSTEIN: Objection, your Honor; legal
25 conclusion.

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2 THE COURT: Well, leave out the word "normal."

3 MR. LA ROSSA: May it please the Court, I
4 refer to the application that this witness signed. I refer
5 to E on page 3.

6 THE COURT: I will withdraw the ruling.

7 MR. LA ROSSA: It is characterized.

8 THE COURT: I will withdraw the ruling. The
9 fact that it is characterized, nonetheless, doesn't make the
10 Judge blink at what is well known in this gambling field --
11 what is and what is not useful and may or may not be normal.

12 Go ahead.

13 Is it a normal way of going about an
14 investigation?

15 THE WITNESS: Yes.

16 Q Search warrant is?

17 A Yes.

18 Q Will you go to page 3 of that affidavit?

19 THE COURT: Now, let me ask the question -- is
20 it an effective way of going about a gambling investigation?

21 MR. LA ROSSA: If you give me two minutes, I
22 will get to that, Judge; not any better than you would.

23 THE COURT: All right.

24 Q Would you go to page 3 and look at E of your
25 affidavit?

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1
2 A Page 3?

3 Q Yes.

4 A E?

5 Q Yes. Starts with the words, "Normal
6 investigative techniques."

7 Did you find it?

8 A Yes.

9 Q That is part of your affidavit, is it not?

10 A Yes.

11 Q Did you say, "Normal investigative techniques
12 have been tried and reasonably appear unlikely to succeed
13 if utilized further"?

14 A Correct.

15 Q You were referring to, among other things,
16 searching the premises, is that right?

17 A No.

18 Q You did not mean that?

19 A No.

20 Q Did you further say in that affidavit, sir, that
21 from your experience, a search of the premises in August of
22 1974 were not have been helpful?

23 MR. BORNSTEIN: Objection, your Honor; not on
24 that page.

25 A Repeat the question.

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Q Tell the Judge what you said in that affidavit under oath about whether you believed the search of the premises would be successful or not.

MR. BORNSTEIN: Objection.

THE COURT: What date?

MR. LA ROSSA: August of 1974.

THE COURT: After the taps?

MR. LA ROSSA: Yes, sir.

THE COURT: You have to know the circumstances.

Go ahead.

MR. LA ROSSA: August 25, 1974.

THE COURT: All right. Would you say that a search at that time, in view of everything that you knew and whatever happened, I suppose, would be a useful investigative technique?

THE WITNESS: To a certain point, your Honor, yes. To a certain point, it would be.

THE COURT: How did you say it? What were the words that you used?

Q May I help you out and refer you to paragraph 17?

A Yes, I am there now.

THE WITNESS: Would you like me to read it?

THE COURT: Let's hear the language you used.

THE WITNESS: "Seizure of records, even if

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1 successful, probably would not be an adequate measure. My
2 experience and the experience of other special agents of
3 the Federal Bureau of Investigation and members of the New
4 York City Police Department has shown that raids of gambling
5 establishments and searches of gamblers in the past have not
6 resulted in the gathering of sufficient physical or other
7 evidence to prove all elements of Federal offenses or the
8 complete nature and scope of a gambling operation.
9

10 "I have learned through my experience and the
11 experience of other agents and officers previously described
12 who have investigated gambling operations that gamblers
13 usually do not keep permanent records.

14 "Furthermore, even if such records are
15 maintained temporarily, gamblers often are able to destroy
16 them immediately prior to or during a physical search.
17 Additionally, when such records have been seized in the
18 past, generally, they have been insufficient to establish all
19 elements of Federal offenses because they are difficult to
20 interpret and are of little or no significance without more
21 complete knowledge of the gambler's activity and method of
22 operation.

23 "And, finally, I also know from experience that
24 a large scale gambling operation, such as the one described
25 previously, utilized numerous 'banks' and 'wire' rooms with

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different employees. The detection of such locations in itself does not disrupt the overall operation.

"If the higher ranking participants in the operation are insulated, my experience has also demonstrated that raids and searches and arrests of participants at lower echelons are of course just a temporary disruptive influence which is solved by replacing arrested participants and changing the locations used previously."

Q Now, on September 24, 1974, you said exactly the same words that you just said there in an application before a Judge, isn't that right?

A Correct.

Q Tell me what happened between September 24, 1974, when you didn't believe the search of the premises would be so effective, and October 10, 1974, which I do believe is about seventeen days, when you swore to an affidavit submitted to a Judge that you believed the search of the premises would be highly successful.

Will you tell us what occurred during those seventeen days?

THE COURT: What did the affidavit say in that regard, without characterization, where you explained the reason why you wanted the search?

MR. LA ROSSA: "There is probable cause to believe

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1 that evidence of the commission of the aforesaid crimes,
2 contraband obtained in the commission of the aforesaid crimes
3 and property which has been used, is designed for and is
4 intended for use in the commission of the said crimes, to
5 wit, records of the illegal gambling enterprises, papers,
6 slips and devices utilized to accept, record and compute
7 wages and moneys owed to and by bettors and other
8 participants in the illegal gambling businesses; records,
9 papers, slips and devices utilized to identify participants
10 in the illegal gambling business, United States currency,
11 telephone lines and instruments and other gambling
12 paraphernalia used to further the said illegal gambling
13 business, will be found on the premises and persons captioned
14 above."

16 THE COURT: It is a little different, isn't it?
17 There is nothing in there saying all elements of Federal
18 crimes are going to be dug up by the supplementary device
19 following the primary purposes of taps.

20 MR. LA ROSSA: I will have to keep reading, your
21 Honor.

22 THE COURT: I just waited for you to pause.
23 When you paused, it seemed to me that there was no
24 contradiction as yet.

25 MR. LA ROSSA: If you keep going, your Honor --

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paragraph 4 is a full page; paragraph 5. It goes on to say, in effect, what we are talking about is all records that are kept by bookmaking operations.

THE COURT: The first time around, as I heard it read, the way to find out, the way to get proof of all the elements necessary to prove Federal crimes and the best way of doing it is by the tap, and now you have a supplementary application made to mop up the rest that can be obtained.

I don't understand what your question means. Similarity of the papers doesn't necessarily mean that you can't have a secondary purpose.

MR. LA ROSSA: It is under United States against Kalustian, Ninth Circuit.

THE COURT: Which is not the law in this Circuit.

MR. LA ROSSA: 529 F. 2d, 585, 1976.

THE COURT: As a matter of fact, it seems to be the law only for the Ninth Circuit. Everybody else seems to --

MR. LA ROSSA: I am not sure that is correct, most respectfully. I think what it does say --

THE COURT: You mean somebody in Pennsylvania also said it was correct?

MR. LA ROSSA: You have a way of cutting through

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2 things.

3 THE COURT: It saves a lot of time.

4 MR. LA ROSSA: If your Honor thinks that the
5 record establishes this point, that is all I want, is a
6 Kalustian point for appellate review and nothing more.

7 THE COURT: I will save you the trouble of
8 dilating too far on it.

9 It seems to me that Kalustian is not the law
10 in this Circuit beyond peradventure of doubt.

11 The surveillance of the criminal enterprise is
12 widely understood to be routinely conducted over the
13 telephone to a major degree and is as a practical
14 requirement best conducted by the very surveillance means
15 that the Government applied for herein.

16 The Third Circuit so holds in U. S. against
17 Armadio; the Eighth Circuit in the United States against
18 Schaeffer where cert was denied by the Supreme Court and
19 even the Eastern District of Pennsylvania explicitly
20 rejected U. S. against Kalustian, which is reported at
21 529 F. 2d., 585.

22 The decision in this case, which is squarely
23 against the Kalustian point, is United States against
24 Sternberg, 525 F. 2d, 1126 at page 1130, decided in 1975.

25 Is there anything else you want from this

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2 witness?

3 MR. LA ROSSA: No.

4 THE COURT: All right. Thank you.

5 (Witness excused.)

6 THE COURT: I agree that it is appropriate
7 after reading all the voluminous papers and, knowing that
8 I had experience with counsel before me, I sought to
9 inform myself on the subject matter.

10 Is there anything else?

11 MR. BORNSTEIN: Your Honor, the Government rests.

12 THE COURT: Is there any proof that the
13 defendants wish to offer?

14 MR. LA ROSSA: No, sir.

15 THE COURT: There may be some questions that I
16 would like to clear up. Let me look at my notes here,
17 please.

18 Now, this one question that I have here, I think
19 has been completely covered by the acceptance of the oral
20 statement of the prosecutor, namely, that the prosecutor's
21 statement as to the Government's knowledge on whether any of
22 the defendants were overheard on the Crescent tap or the
23 Blackman tap is not contested by any of the defendants, is
24 that correct?

25 MR. LA ROSSA: That's correct.

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2 THE COURT: Now, with respect to defendant
3 Gagliano's earlier contention, which I understand has been
4 withdrawn, he claimed at one time but no longer claims
5 that he failed to receive post interception notice
6 regarding the State tap.

7 Is my understanding correct that no such
8 contention is any longer made herein?

9 MR. BORNSTEIN: I conferred with Mr. Victor
10 either last Thursday or Friday and asked him this question,
11 and he said I was authorized to tell the Court that he
12 withdraws that issue.

13 THE COURT: I also understand that there is no
14 contention that the sealing procedures used with the Federal
15 taps are defective in any way and that those sealings of
16 the Federal taps were made appropriately, is that correct?

17 MR. LA ROSSA: Yes, that's correct; that is our
18 position.

19 THE COURT: I believe that covers all the
20 questions that I had in mind.

21 I take it that all parties rest on these
22 hearings?

23 MR. LA ROSSA: Yes, sir.

24 MR. RICHMAN: Yes, sir.

25 MR. BORNSTEIN: If I might, I would like to

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2 recall Agent Bonavolonta, if I might.

3 MR. LA ROSSA: Why don't you tell us what want?

4 THE COURT: What is the point?

5 MR. BORNSTEIN: Simply to the effect that all
6 three affidavits had as their opening target the higher
7 echelon members of the participants, which are designated as
8 Somma, Masaratti, and DiMartino, and that it was one of the
9 needs to use electronic surveillance in order to get the
10 evidence against the higher echelon members of the combine.

11 THE COURT: Well, there is no issue about that,
12 is there, Mr. LaRossa?

13 MR. DIRENZO: I don't think we are in a position
14 to stipulate that.

15 THE COURT: I don't ask that. Are you going
16 to controvert it?

17 MR. DIRENZO: I might not but I don't want to go
18 on record as letting it go back unopposed.

19 MR. LA ROSSA: You will have to put him on the
20 stand.

21 THE COURT: Put the witness on the stand.

22 J U L E S B O N A V O L O N T A, recalled.

23 FURTHER DIRECT EXAMINATION

24 BY MR. BORNSTEIN:

25 Q Agent Bonavolonta, Mr. LaRossa questioned you

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2 at some length about various portions of the search warrant
3 affidavit that you were aware of and the one you were aware
4 of it.

5 I direct your attention to Government's Exhibit
6 10, your affidavit, page 35, the Ward order, paragraph 26.

7 A Yes.

8 Q Did you state toward the bottom of paragraph 26
9 as follows:

10 "If the higher ranking participants in the
11 operation are insulated, my experience has also demonstrated
12 that raids and searches and arrests of participants at
13 lower echelons are often just a temporary disruptive
14 influence which is solved by replacing arrested participants
15 and changing the locations used previously."

16 Is that correct?

17 A That's correct.

18 Q And in paragraph 27, paraphrasing it for a
19 moment, did you also swear to the issuing Magistrate that
20 three men previously described in the affidavit named
21 Somma, Masaratti and DiMartino, you believed to be
22 effectively insulated from the gambling business and that
23 Frank Caruso was the only link, and going into page 28,
24 that either searches or continued physical surveillances
25 would be doubtful in terms of their use in obtaining

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2 evidence against DiMartino, Somma and Masarreti?

3 A That's correct.

4 Q Directing your attention to Exhibit 11, page 23,
5 paragraph 18 --

6 MR. DIRENZO: With the Court's permission, might
7 I point out that these are already exhibits in evidence and
8 are before the Court?

9 THE COURT: I know but they are also pleasantly
10 being brought to my ear's attention.

11 I'm sorry that it is taking time, but it is just
12 as well for us to have out in the open the very things
13 that you said you would like to have out in the open.

14 Go ahead.

15 Q Did you also in paragraph 18 of your affidavit,
16 supporting Government's 11, at page 23, again say that
17 Somma, Masaratti and DiMartino were insulated and were
18 still insulated in the gambling business, that Caruso was
19 still their only link and that precautions were taken to
20 insure the persons of their stature in the lower echelon?

21 Did you swear to that and bring it to the
22 Magistrate's attention as a factor to be considered to
23 demonstrate the need to use electronic surveillance?

24 A Yes, I did.

25 Q Did you further say in that same exhibit in

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paragraph 19, pages 23 through 24, that in your opinion, electronic surveillance based on those factors was the only technique that had a likelihood of securing the evidence to prove the commission of the above described violations by those co-conspirators, such as DiMartino, Somma, Masaratti and others, as yet unknown, in the upper levels of the gambling business who profit most in its operation?

A Yes.

Q And that was in August of 1974.

Now, in September of 1974, did you again, sir, bring to the Court's attention in paragraph 8 of your affidavit at page 11, that in fact there had been one intercept of Masaratti in conversations with Caruso, in paragraph 8-B?

A Yes, I did.

Q And in paragraph 8-A, just above it, did you refer back to your earlier affidavits referred to there as Exhibit D-3?

A Yes, I did.

Q And did you bring that to the Court's attention in an effort to demonstrate that the need to intercept was to obtain evidence against those in the higher echelon of the gambling combine?

A Yes, I did.

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2 Q Did you get that evidence against the higher
3 echelon members?

4 A No, I did not.

5 Q And then you got a search warrant, is that
6 correct?

7 A That's correct.

8 Q Took what you could get, as it were?

9 A Exactly.

10 MR. BORNSTEIN: No further questions.

11 THE COURT: Any cross-examination?

12 CROSS-EXAMINATION

13 BY MR. LA ROSSA:

14 Q After the search warrant, did you get any higher
15 echelons in the case?

16 A No, I did not.

17 THE COURT: Is that all?

18 Thank you very much. You are excused.

19 (Witness excused.)

20 THE COURT: Is there any argument that you
21 gentlemen feel that you wish to call to my attention that
22 would aid me in reaching a decision on the motions that are
23 pending?

24 Anything you wish to say that has not already
25 been said in your papers, Mr. LaRossa?

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2 MR. LA ROSSA: No, sir, I think I will rest
3 upon my papers.

4 THE COURT: Does any other defendant wish to
5 call my attention to any matter that --

6 MR. LA ROSSA: You did ask us to address
7 ourselves to a memorandum. I assume you are not referring
8 to that. You asked us to submit a memorandum to you within
9 a day, which we have agreed to do in this morning's
10 session.

11 THE COURT: Yes.

12 MR. LA ROSSA: I assume you mean in addition to
13 that?

14 THE COURT: In addition to that.

15 MR. LA ROSSA: No, sir.

16 THE COURT: That is on the question of the
17 legislative intent that may be involved.

18 MR. LA ROSSA: That's correct.

19 THE COURT: Now, I just want to clear away
20 what is not before the Court:

21 The motion by the defendant Caruso, and to the
22 extent that they apply to anybody else seeking discovery,
23 b'll of particulars, Brady material and a dismissal of the
24 indictment on the ground that the grand jury acted on the
25 basis of illegal wiretape evidence.

1 jbesb

2 I leave to one side the further application
3 which is for suppression of wiretap evidence and I reserve
4 decision on the suppression motion until the coming in of
5 the memoranda we just discussed.

6 I take it that the subjects of discovery,
7 bills of particulars, Brady material and the grand jury
8 action are either moot or no longer pressed.

9 MR. LA ROSSA: They have been settled with the
10 prosecutor with everything except the dismissal with respect
11 to the grand jury, and I think that would depend upon your
12 Honor's decision on the motion to suppress.

13 THE COURT: It wouldn't affect the grand jury
14 proceedings. I might dismiss the indictment but that is
15 not because the grand jury acted on the basis of illegal
16 evidence. If I suppressed, it would probably denude the
17 Government of a chance to prove the case.

18 MR. LA ROSSA: Most probably, I think it is
19 moot. I think you are right.

20 THE COURT: Yes. Then all of those motions
21 will be deemed to have been satisfied as indicated and the
22 only open motion, then, to be ruled upon is the suppression
23 of the wiretap evidence upon the coming in of the final
24 memoranda.

25 MR. LA ROSSA: That's correct, sir.

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2 THE COURT: The defendant Gagliano, represented
3 by Victor, presented motion papers that likewise sought
4 discovery, bills of particulars and a severance.

5 Now, the severance is denied and I take it that
6 discovery and the bills of particulars have been mooted or
7 satisfied, is that correct?

8 MR. LA ROSSA: Mr. Bornstein, can you help on
9 this? I have not talked on this.

10 MR. BORNSTEIN: I think we satisfied everything
11 on the discovery. I don't know if Mr. Victor is pressing
12 anything on the bill of particulars.

13 THE COURT: All right. I'll leave it that
14 I believe everything is satisfied and, therefore, there is
15 nothing to be done on those motions any more and that if
16 Mr. Victor has any particular matter that he thinks is
17 still open, he may call it promptly to my attention orally
18 at my chambers on presentation of himself and the
19 prosecutor and I will take it up right then and there and
20 deal with it.

21 In other words, anything he is entitled to by
22 way of discovery, I will see that he gets, if he has not
23 already gotten it.

24 So far as bills of particulars are concerned, my
25 general attitude is the indictment is sufficient. On the

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2 other hand, if the Government wants to furnish particulars,
3 I have no objection to particularization of indictment.

4 That leaves open under the Gagliano motion only
5 the matter of a suppression hearing which has now been held,
6 so that is satisfied and the suppression of the evidence on
7 which decision is reserved until the coming in of the
8 final memorandum.

9 The defendant Messina, represented by Mr.
10 Panzer sought a severance. That motion is denied, and the
11 discovery and a bill of particulars, I take it that
12 discovery and the bill of particulars are now mooted, is
13 that right?

14 MR. PANZER: That's correct. They have been
15 satisfied, your Honor.

16 THE COURT: Then to the extent that the
17 defendant Messina has any standing, which I think I ruled
18 against him on, the suppression of the wiretap evidence will
19 be determined on the reserved decision pending the coming
20 in of the memorandum.

21 MR. PANZER: Very well.

22 THE COURT: I believe that that covers all of
23 the issues that remain before the Court on the pending
24 motions.

25 I have already indicated on the record my

1 jbesb

2 decision on the issue of standing and anybody who is
3 adversely affected thereby, of course has his exception
4 automatically.

5 On the other hand, if a suppression should
6 result from the decision to be made, I will give further
7 consideration to those who lack standing in respect of what
8 the trial against them would encompass, which means that I
9 would reconsider the question of standing if there is a
10 suppression as to some.

11 I call to the attention of counsel, the
12 decision made at, I believe two o'clock this afternoon, in
13 the case of United States against Gigante by the Court of
14 Appeals and have read that decision, and it plainly does
15 not embrace the particular circumstances of the case before
16 this Court in view of the fact that the Gigante case
17 involved failure to seal following termination of the
18 wiretaps for periods in excess of eight months and up to
19 and in excess of twelve months, which is not this case at
20 all.

21 I believe that the case gets down to whether or
22 not the sealing of the G. & D. tap and the Social Club tap
23 was timely and at all events satisfactorily explained,
24 giving due regard to the point of the Government that
regardless of how that question is answered, the tapes were

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2 not used as trial evidence and the statute interdicts the
3 use for evidentiary purposes. In that regard, query the
4 effect of the definition in the State statute of a criminal
5 proceeding.

6 I believe that that concludes the matter in all
7 respects.

8 I would appreciate it if you would deliver your
9 memoranda on the open question to my chambers rather than
10 filing them with the clerk so that I will not encounter any
11 delay in dealing with the subject matter.

12 MR. LA ROSSA: Will the close of business
13 tomorrow be satisfactory?

14 THE COURT: Yes.

15 MR. BORNSTEIN: May I ask your Honor's
16 consideration on one other point:

17 The phrase "satisfactory explanation" has been
18 used at several points where there is a delay in sealing.
19 I simply wanted to call your Honor's attention to, I think,
20 a point we mentioned in our memo where we did cite the
21 Lawson case but principally, insofar as it relied on the
22 Chung case in the Ninth Circuit, which is not unpublished,
23 and I think has some precedential value.

24 Essentially, it would be the Government's
25 position that assuming we think that the record is adequate

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2 to find a satisfactory explanation, but even assuming that
3 it were not the so-called satisfactory explanation for use
4 at trial, there is simply not on the record before the
5 Court a deliberate ignorance of the law or a disregard for
6 it, and so to speak, that the good faith standard would be
7 a lesser one than the satisfactory explanation.

8 THE COURT: Well, that all goes into
9 satisfactory explanation.

10 MR. BORNSTEIN: All right, your Honor. Thank
11 you.

12 (Court adjourned to June 30, 1976.)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

v.

75 Crim. 1157

FRANK CARUSO, :

Defendant.

-----x

July 6, 1976
2:30 P.M.

B E F O R E :

HON. ROBERT J. WARD,

District Judge.

A P P E A R A N C E S :

ROBERT B. FISKE, JR., ESQ.,
United States Attorney for the
Southern District of New York
PETER SUDLER, ESQ.,
Assistant United States Attorney

JAMES M. LA ROSSA, ESQ.
Attorney for the Defendant

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2 THE COURT: Let me hear the application.

3 MR. LA ROSSA: On behalf of the defendant
4 Frank Caruso, he hereby withdraws his plea of not guilty
5 to the indictment and offers to plead guilty to Count 2
6 of the indictment.

7 THE COURT: Why don't I get the applications
8 of the other three and then I will proceed to make my
9 inquiry.

10 MR. MASTROPIERI: On behalf of the defendant
11 D'Addario, the defendant is prepared to withdraw his
12 prior plea of not guilty and offers to plead guilty to the
13 second count of the indictment.

14 MR. SIEGEL: Your Honor please, Daniel Latella
15 desires permission to withdraw his plea of not guilty here-
16 tofore entered and plead guilty to the second count of
17 the indictment.

18 MR. DI RENZO: The defendant Annatone desires
19 to withdraw his not guilty plea heretofore entered and
20 now desires to enter a plea under Count 2 of the said indict-
21 ment.

22 THE COURT: Thank you, gentlemen.

23 Does the clerk have the statement of the
24 constitutional rights?

25 THE CLERK: Yes, your Honor.

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2 THE COURT: Very well. I would address you
3 four gentlemen in turn. First Mr. Caruso, then Mr.
4 D'Addario, then Mr. Latella and then Mr. Annatone.

5 I show you each of you a statement bearing a
6 signature and I will ask you to examine the statement and
7 to indicate to me if you signed it, and then I will ask
8 your attorney if he signed it and I will ask you if you
9 read it before you signed it.

10 Mr. Caruso, I show you a statement regarding
11 your constitutional rights. Is that your signature?

12 DEFENDANT CARUSO: Yes.

13 THE COURT: Mr. LaRossa, is that your signature?

14 MR. LA ROSSA: It is, your Honor.

15 THE COURT: Mr. Caruso, did you read that state-
16 ment before you signed it?

17 DEFENDANT CARUSO: I did.

18 THE COURT: Do you fully understand the contents
19 thereof?

20 DEFENDANT CARUSO: Yes.

21 THE COURT: Mr. D'Addario, I show you a
22 statement of constitutional rights. I ask you to examine
23 the signature thereon and I ask you if that is your
24 signature?

25 DEFENDANT D'ADDARIO: Yes, it is.

1 rdjw 4

2 THE COURT: Mr. Mastropieri, I would ask you
3 if the signature appearing thereon is yours?

4 MR. MASTROPIERI: It is, your Honor.

5 THE COURT: Mr. D'Addario, did you read the
6 statement prior to having signed it?

7 DEFENDANT D'ADDARIO: Yes, sir.

8 THE COURT: Do you fully understand the
9 contents thereof?

10 DEFENDANT D'ADDARIO: Yes.

11 THE COURT: Mr. Latella, I will show you a
12 statement bearing a signature. I ask you if that is your
13 signature.

14 DEFENDANT LATELLA: Yes, your Honor.

15 THE COURT: Is that your signature annexed to
16 that document, Mr. Siegel?

17 MR. SIEGEL: Yes, sir.

18 THE COURT: Mr. Latella, I would inquire if
19 you read the statement before you signed it?

20 DEFENDANT LATELLA: Yes, sir.

21 THE COURT: Do you fully understand its meaning
22 and significance and contents?

23 DEFENDANT LATELLA: Yes.

24 THE COURT: Finally, I would show this statement
25 to Mr. Annatone and ask him to examine it and tell me

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2 whether he signed it.

3 DEFENDANT ANNATONE: Yes, your Honor.

4 THE COURT: I would ask Mr. DiRenzo, is that
5 your signature?

6 MR. DI RENZO: It is my signature, your Honor.

7 THE COURT: Mr. Annatone, did you read the
8 statement before you signed it and do you fully understand
9 its contents?

10 DEFENDANT ANNATONE: Yes, I do.

11 THE COURT: I will direct that the four
12 statements which have been identified by the four defendants
13 and by their attorneys be filed and made part of the record
14 of these proceedings.

15 I would now address myself to each of you
16 gentlemen in turn.

17 It is my understanding that the count as to
18 which pleas of guilty are being offered carries with it a
19 maximum penalty of five years in prison and a maximum
20 fine of \$20,000.

21 I would inquire of the United States Attorney,
22 Mr. Sudler, am I correct in this regard?

23 MR. SUDLER: Yes, you are, your Honor.

24 THE COURT: Addressing myself to Mr. Caruso,
25 do you understand that Judge Pollack, who will sentence

1 rajw 6

2 you in this case, if he sees fit, may sentence you to jail
3 for a maximum term of five years plus a maximum fine of
4 \$20,000?

5 DEFENDANT CARUSO: Yes, sir.

6 THE COURT: Have you conferred with counsel
7 prior to your offering to plead guilty this afternoon?

8 DEFENDANT CARUSO: Yes, sir.

9 THE COURT: Have any threats of any sort
10 been made to you to induce you to plead guilty?

11 DEFENDANT CARUSO: None.

12 THE COURT: I understand, Mr. LaRossa, that
13 Judge Pollack heretofore denied certain motions to suppress.

14 MR. LA ROSSA: That is correct, your Honor.

15 THE COURT: And it is my understanding that
16 the plea which is being offered this afternoon is to be
17 taken without prejudice to the rights of the defendants
18 affected by the adverse decision of the suppression motion
19 to, if they choose to do so, take an appeal in connection
20 with that adverse ruling; is that correct?

21 MR. LA ROSSA: That is the understanding between
22 the parties, your Honor.

23 THE COURT: Aside from that understanding
24 which I have outlined to your counsel, Mr. LaRossa, and
25 which Mr. LaRossa has indicated I am correct in, I would

1 rdjw 7

2 ask you, Mr. Caruso, have any promises of any sort been
3 made to you beyond what I have just said in exchange, have
4 any other promises been made to you to induce you to plead
5 guilty?

6 MR. LA ROSSA: There are a few things, your
7 Honor, if I may. One is that the defendant will not be
8 called as a witness in this trial; and two, that no specific
9 recommendation with respect to a sentence will be made by
10 the government one way or the other.

11 MR. SUDLER: That is correct, your Honor.

12 THE COURT: Beyond the three matters, the
13 one which I mentioned originally to Mr. LaRossa regarding
14 the fact that the plea is without prejudice to your right
15 to appeal from an adverse ruling on a motion to suppress;
16 second, that you would not be required to testify in any
17 subsequent trial arising from this indictment; and third,
18 that the government will make no recommendation regarding
19 sentence; do you have any other promises or any understand-
20 ings of any sort with regard to this case which might be
21 considered to be an inducement which induced you to plead
22 guilty?

23 MR. LA ROSSA: I'm sorry to interrupt again,
24 your Honor, but inherent in the section which permits
25 appeal from this type of motion is the consent from the

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2 United States Attorney that an appeal can be made.

3 In the interest of clarity, in case this might
4 become an issue in the future, the U.S. Attorney should
5 make a statement on that.

6 MR. SUDLER: The government consents to an
7 appeal being taken from the ruling of Judge Pollack as
8 to the motion to suppress.

9 MR. LA ROSSA: That is the full understanding
10 of the parties, your Honor.

11 THE COURT: Mr. Caruso, are you pleading
12 guilty this afternoon of your own free will?

13 DEFENDANT CARUSO: Yes, sir.

14 BY THE COURT:

15 Q Are you a user of alcohol or narcotics?

16 A No.

17 Q You are fully aware of what you are doing this
18 afternoon, fully in command of your thoughts and senses?

19 A Yes.

20 Q Count 2 charges, and since it is reasonably
21 brief I am going to read it and I am going to ask the
22 other three defendants to listen to my reading because I
23 will not read the same count four times.

24 "The grand jury further charges:

25 "From in or about January 1974 and continuously

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2 thereafter up to and including the date of the filing of
3 this indictment, in the Southern District of New York and
4 elsewhere, Frank Caruso, Robert D'Addario, Michael Detorie,
5 Michael DiRienzo, Andrew DeSimone, Joseph Bugliarelli,
6 Leo Ferranda, Carmine Galliano, Joseph Messina, Daniel
7 Latella and Emil Annatone, the defendants, did unlawfully,
8 wilfully and knowingly conduct, finance, manage, supervise,
9 direct and own an illegal gambling business, to wit, a
10 sports betting and mutual race horse policy business.

11 (a) Being in violation of the laws of the State
12 of New York, to wit, New York State Penal Law Sections 225.05
13 and 225.10;

14 (b) Involving five or more persons who conduct,
15 finance, manage and supervise, direct and own part of
16 said illegal gambling business, and;

17 (c) Remaining in substantially continuous operation
18 for a period in excess of thirty days, and having a gross
19 income of \$2,000 (in a single day)."

20 This is charged as a violation of Title 18,
21 United States Code, Sections 1955 and 2.

22 Did you do that?

23 A Yes.

24 Q Specifically what did you do in connection
25 with this illegal gambling business?

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2 A Specifically what did I do?

3 Q Did you conduct it, did you finance it, did
4 you manage it, did you supervise it or did you own it?

5 A I managed it.

6 Q And was the business which you managed a
7 gambling business?

8 A Yes.

9 Q And I would assume that it was not an OTB
10 parlor or any other legal gambling operation; am I correct?

11 A Yes.

12 Q How many persons were involved as managers,
13 owners or employees of this gambling business, including
14 yourself? Was it five or more?

15 A Five including myself.

16 Q Was the business in continuous operation for
17 a period of thirty or more days or did the business have
18 a gross revenue of \$2,000 or more in any single day?

19 A Thirty days.

20 Q It was in continuous operation for a period of
21 at least thirty days, is that correct?

22 A Yes, sir.

23 Q Did you know that the business which you were
24 managing was an illegal gambling business?

25 A Yes.

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1 rdjw 11

2 Q Where was the business in fact conducted, at
3 what premises or location?

4 A It was conducted in a sort.

5 Q At what location?

6 A In the Bronx.

7 Q I would note that this location was in and
8 within the Southern District of New York. And the period
9 of thirty or more days during which the business was
10 conducted, was that period somewhere within the period from
11 January 1974 up to November 25, 1975?

12 A Yes.

13 THE COURT: Mr. Sudler, are there any additional
14 questions you would like the Court to put to Mr. Caruso?

15 MR. SUDLER: No, your Honor. I believe
16 you have covered the elements of the statute.

17 THE COURT: Mr. LaRossa, is there any reason
18 you know of why Mr. Caruso should not plead guilty to
19 Count 2 of this indictment?

20 MR. LA ROSSA: I know of no reason, your Honor.

21 THE COURT: The Court accepts the Defendant
22 Caruso's offer to plead guilty to Count 2 of this indictment,
23 finding that the plea is knowledgeable, voluntary and has
24 a basis in fact. It contains all the elements of the crime.
25 The plea is therefore accepted.

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2 I believe, Mr. LaRossa, that a pre-sentence
3 report will be appropriate. Do you agree?

4 MR. LA ROSSA: Yes, your Honor. And a
5 sentence date has been fixed.

6 THE COURT: So I am informed and I will note
7 that in just one moment.

8 I will direct that a pre-sentence report be
9 prepared and I set this case down for sentence on September
10 20, 1976, at 11:30 a.m. here in Part I, in Courtroom 506,
11 before the Honorable Milton Pollack.

12 MR. LA ROSSA: Very good, sir.

13 THE COURT: What is Mr. Caruso's present
14 status?

15 MR. LA ROSSA: As far as bail is concerned,
16 your Honor?

17 THE COURT: Yes.

18 MR. SUDLER: Your Honor, the government will
19 consent to a continuation of the present bail status for
20 all these defendants.

21 THE COURT: The bail heretofore fixed is
22 continued.

23 MR. LA ROSSA: Thank you, sir.

24 THE COURT: Is there anything further relative
25 to Mr. Caruso's case before we proceed to Mr. D'Addario's

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MR. SUDLER: No, your Honor.

THE COURT: Very well.

MR. LA ROSSA: May we be excused?

THE COURT: You may. You gentlemen can leave.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

FRANK CARUSO,

Defendant.

75 Cr. 1157

September 20, 1976
11:50 a.m.

BEFORE:

HON. MILTON POLLACK,

District Judge

APPEARANCES:

ROBERT B. FISKE, JR., ESQ.
United States Attorney for the
Southern District of New York
BY: PETER D. SUDLER, ESQ.

Special Attorney, United States
Department of Justice

JAMES M. LA ROSSA, ESQ.,
Attorney for the Defendant.

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2 MR. SUDLER: Goverment is ready.

3 THE COURT: Mr. LaRossa, is there anything
4 you want to say on behalf of Frank Caruso?

5 MR. LA ROSSA: Yes, sir, there is.

6 In the first instance, I take issue with the
7 Probation Report's suggestion that Mr. Caruso is more culpa-
8 ble than someone else with respect to this case. Your Honor
9 has a full and complete Probation Report before you. Your
10 Honor knows that, based upon the way this matter was handled,
11 Mr. Caruso and the other defendants in this case saved the
12 Court many, many weeks of trial. I respectfully submit to
13 the Court that that, in and of itself, should not be the
14 only factor that the Court decides, but I respectfully
15 submit that it is a step toward rehabilitation.

16 That Mr. Caruso has been a gambler most of his
17 life, your Honor, I cannot contest. However, in February 197
18 he and his wife purchased a card and gift shop in Ardsley.

19 Since February, he has been there constantly
20 on a daily basis, assisting his wife in the operation of
21 this business. He happens to have a very lovely family, a
22 daughter who goes to Rye High School. I frankly submit to
23 the Court that, although I can in no way suggest to the
24 Court that there is nothing wrong with gambling, it does
25 seem to me that it has become a way of life in New York City.

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2 I think we see it every time we go to a sporting event.

3 Your Honor, I respectfully submit that this man
4 shouldn't be treated in any different way than any other
5 defendants in this case. I think he has taken a first step
6 forward with respect to rehabilitation. His wife needs his
7 assistance in running that store. A supervised probationary
8 period will absolutely deter him from making another wrong
9 step, your Honor, and have him completely under your Honor's
10 control. There is no way that he can commit a crime during
11 the probationary period without your Honor incarcerating him
12 to any limit that your Honor suggests or chooses.

13 I ask your Honor to give him the opportunity that
14 you gave the other defendants with respect to this case.

15 THE COURT: Mr. Caruso, is there anything you
16 want to say on your own behalf before imposition of sentence?

17 THE DEFENDANT: No, sir.

18 THE COURT: Does the Government have anything to
19 say here?

20 MR. SUDLER: No, your Honor.

21 THE COURT: These are very troublesome cases,
22 but when convictions of gambling offenses reach the propor-
23 tions of seven convictions, including the instant offense,
24 and the conduct goes on with impunity, I think it is time
25 for the Court to take notice of the situation.

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MR. LA ROSSA: May I just interrupt you for a moment, your Honor.

THE COURT: Yes.

MR. LA ROSSA: Your Honor, this arrest completely vitiated any gambling operation that was going on. There is no more operation going on. It is over. It is completely over, your Honor. There is nothing going on at this time. It is the reason the man bought this business. It is the reason he got out of this. I might also add, your Honor, that from what I understand, most respectfully, it is a losing business. There has been no earnings with respect to it for a good many years. He is in a legitimate business now. He is ready to take the first step forward.

I am sorry to interrupt, your Honor, but I thought it necessary that I bring that to your attention.

THE COURT: I don't feel any different about your interruption. I think that it was entirely appropriate.

This man was the manager and controller of a larger enterprise. He is a chronic offender. It is the judgment of the Court that the defendant be committed to the custody of the Attorney General for a term of two years and fined the sum of \$2,000 payable in ten days.

On the condition that the defendant is confined in a jail-type facility for a term of one year, the balance

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2 of the sentence of imprisonment only is suspended and he is
3 placed on probation for a period of three years. The fine
4 is a committed fine.

5 MR. LA ROSSA: Will your Honor continue the
6 defendant on bail pending appeal?

7 THE COURT: Is there any objection to that?

8 MR. SUDLER: Yes, your Honor. The Government
9 opposes that.

10 THE COURT: The defendant is continued on bail
11 pending appeal. The way that will be handled is that the
12 jail term and the fine are stayed pending appeal on the
13 condition that you proceed promptly. This is in accordance
14 with the understanding at the time of the investigation
15 hearing.

16 MR. LA ROSSA: That's correct, thank you, sir.

17 THE COURT: The sentence is in pursuance of Title
18 18 U.S.C., Section 3651.

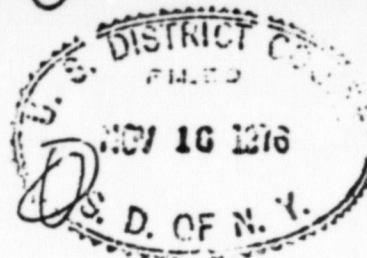
19 MR. LA ROSSA: May it please the Court, I think
20 there is an open count, sir.

21 MR. SUDLER: That's correct, your Honor. The
22 Government moves to dismiss Count 1 of the indictment as
23 to Defendant Caruso.

24 THE COURT: Granted.

25 * * * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

vs.

MICHAEL Di RIENZO,

Defendants.

75 Cr. 1157

New York, New York.
August 23, 1976 - 10:00 A.M.

Before:

HONORABLE MILTON POLLACK, District Judge.

APPEARANCES:

FOR THE GOVERNMENT:

JAMES R. HASTINGS, Special Attorney, Strike Force.

FOR THE DEFENDANT:

ALBERT E. YORIO, ESQ.,
GERALD ZUCKERMAN, ESQ.,

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2 THE COURT: What about DiReinzo. Is there
3 an application going to be made to plead?

4 MR. YORIO: Yes, your Honor.

5 THE COURT: Have you gone over with your client
6 his constitutional rights?

7 MR. YORIO: Yes.

8 THE COURT: He is fully familiar with them
9 and read them and has signed a statement of his constitu-
10 tional rights?

11 MR. YORIO: He has read them and he will sign
12 it now.

13 THE COURT: We will take that plea up now before
14 I take up the other court business.

15 The application is to withdraw the plea to which
16 count?

17 MR. YORIO: The second count, your Honor.

18 THE COURT: Count 2?

19 MR. YORIO: Yes, your Honor.

20 (Pause.)

21 THE COURT: Mr. Gagliano --

22 MR. YORIO: You meant Mr. DiReinzo, your Honor.

23 THE COURT: Yes, thank you.

24 Are you ready?

25 MR. YORIO: Yes, your Honor.

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2 THE COURT: I would like to have Mr. DiRienzo
3 come up.

4 BY THE COURT:

5 Q Mr. DiRienzo, what is your full name?

6 A Michael DiRienzo.

7 Q What is your age?

8 A Sixty-four, August 12, 1912.

9 Q What was the extent of your education and
10 schooling?

11 A I went to about 7A, 7B.

12 Q Are you currently or have you recently been
13 under the care of a physician or psychiatrist?

14 A No. I am under the doctor's care.

15 Q For what ailment?

16 A I had a heart attack. And I got diabetes.

17 Q Does that in any way impair your ability to
18 understand what you are doing this morning?

19 A No. I understand what I am doing.

20 Q Your attorney here is Mr. Yorio?

21 A Yes.

22 Q And are you satisfied with the advise that
23 your attorney has given you in respect to your course of
24 action this morning?

25 A Yes.

desb

DiRienzo

4

1 Q Have you received a copy of Count 2 of the
2 indictment and read it?
3

4 A Yes, sir.

5 Q Did you say "yes"?
6

7 A Yes.
8

9 Q And have you had time to consult with your
10 attorney concerning Count 2 and your course of action
11 this morning?
12

13 A Yes.
14

15 Q Are you satisfied with the advice that you have
16 received?
17

18 A Yes, sir.
19

20 Q Do you want Count 2 of the indictment read
21 to you at this time or will you waive the reading as un-
22 necessary?
23

24 A I waive.
25

26 Q Are you ready to plead to Count 2 of the indict-
27 ment?
28

29 A Yes, sir.
30

31 Q What is your plea?
32

33 A Guilty.
34

35 Q Are you familiar with the range of penalties
36 to which you may be subjecting yourself by your plea,
37 including the maximum sentence?
38

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desb

DiRienzo

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A Yes.

Q What do you understand that to be?

A ... I could go to jail.

Q For how long?

A Up to two to five years.

Q And what kind of a fine could be included if the Court thought it was appropriate?

A One to twenty thousand.

Q Have any threats or promises been made to induce you to plead guilty?

A No.

Q Is there any understanding or any prediction that has been made to you by anybody concerning the sentence that you will receive?

A No.

Q Has any lawyer, officer or agent of any branch of the Government promised or suggested that you would receive a lighter sentence or probation if you pleaded guilty?

A No.

Q Have you had an opportunity to read a statement of your constitutional rights this morning in court?

A Yes. I just read that.

Q Did you understand it?

1 desb

DiRienzo

2 A Yes.

3 Q Do you understand those rights?

4 A Yes.

5 Q And did you sign your name to a copy of a
6 statement of those rights in acknowledgment of your having
7 read and understood it?

8 A Yes.

9 Q Did your lawyer also sign his name to the foot
10 of it?

11 A Yes.

12 Q That may be submitted and filed with the record
13 of these proceedings.

14 Now, this indictment charges that from
15 in or about January 1974 and continuously thereafter, to
16 the date of the filing of this indictment, which was
17 November 25, 1975, in the Southern District of New York,
18 you unlawfully and wilfully and knowingly conducted,
19 financed, managed, supervised, directed and owned an illegal
20 gambling business, namely, a sports betting and mutuel
21 race horse policy business.

22 Did you do that?

23 A Yes.

24 Q Did you know that that was in violation of the
25 laws of the State of New York?

1 desb

DiRienzo

7

2 A Yes.

3 Q Did that involve five or more persons who
4 conducted, financed, managed, supervised, directed and
5 owned a part of the illegal gambling business?

6 A Yes.

7 Q And did it remain in substantially continuous
8 operation for a period in excess of 30 days with a gross
9 revenue of \$2000 in a single day?

10 A Yes, sir.

11 Q You did all those things wilfully and knowingly,
12 is that right?

13 A Yes.

14 THE COURT: Mr. Yorio, is there any reason
15 that you know of why Mr. DiRienzo should not plead guilty
16 to this count of the indictment?

17 MR. YORIO: No, your Honor.

18 THE COURT: Does the Government have any other
19 suggestions with respect to the scope of the charge?

20 MR. HASTINGS: No, your Honor.

21 THE COURT: Is there anything else that is
22 involved in the charge that has not been covered in the
23 questioning of the defendant?

24 MR. HASTINGS: No, your Honor.

25 MR. ZUCKERMAN: It is our understanding that

1 desb

8

2 by this plea the defendant is reserving his rights to
3 appeal from a prior suppression hearing, denial of a
4 suppression hearing.

5 I spoke with the U. S. Attorney and it is
6 agreeable.

7 THE COURT: In other words, you are reserving
8 your right to appeal from the denial of the suppression--

9 MR. ZUCKERMAN: Yes, sir?

10 THE COURT: -- application and that that is
11 to survive this particular plea of guilty?

12 MR. ZUCKERMAN: Yes, your Honor.

13 THE COURT: So that an appeal may be taken from
14 the suppression order?

15 MR. ZUCKERMAN: Yes.

16 THE COURT: Is that correct as far as the Govern-
17 ment is concerned?

18 MR. HASTINGS: That is correct, your Honor.
19 There is also an understanding, your Honor, that this
20 defendant will not have to testify against any of these
21 other defendants pertaining to the facts in this indictment
22 before this Court.

23 MR. ZUCKERMAN: It is also our understanding
24 at the time of sentencing Count 1 will be dismissed.

25 THE COURT: All right. Count 1 will be carried

1 desb

9

2 until the date of sentence.

3 The plea is accepted, this Court finding that
4 the plea is knowledgeable, voluntary and has a basis
5 in fact and it contains all of the evidence of the crime.

6 A presentence report will be ordered here. The
7 date for sentence is fixed at September 28, 1976, at 2:15
8 P.M.

9 The present bail, with the consent of the
10 Government, is continued until the date of sentence.

11 MR. HASTINGS: Yes, your Honor.

12 THE COURT: Anything else, gentlemen?

13 That concludes the matter.

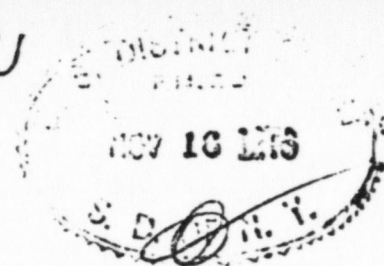
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15
16 I (We) hereby certify that the foregoing
17 is a true and accurate transcript, to the best
18 of my (our) skill and ability, from my (our)
stenographic notes of this proceeding.

19 *Raymond W. Desimone*

20 Official Court Reporter
U. S. District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
:
UNITED STATES OF AMERICA :
:
vs. : 75 Cr. 1157
:
MICHAEL Di RIENZO, :
:
Defendant. :
:
-----x

New York, New York.
September 20, 1976 - 2:15 P.M.

Before:

HONORABLE MILTON POLLACK, District Judge.

APPEARANCES:

FOR THE GOVERNMENT:

PETER D. SUDLEY, Special Attorney, U.S. Department of
Justice.

FOR THE DEFENDANT:

ALBERT E. YORIO, ESQ.
GERALD ZUCKERMAN, ESQ.

ewb

2

MR. SUDLEY: Government is ready.

MR. ZUCKERMAN: My name is Gerald Zuckerman.

Mr. Yorio is here too.

THE COURT: Is there anything that counsel want to say before imposition of sentence on Mr. DiRienzo?

MR. ZUCKERMAN: Yes, your Honor, may it please the Court.

Mr. DiRienzo is 64 years old. He is married and has a family.

Your Honor, I am sure, as he looks through the probation report you will see the lengthy criminal record. I hasten to point out to your Honor that since 1961 the only offenses are gambling or gambling-connected cases.

Mr. DiRienzo is a gambler, your Honor. He never denied it. As a matter of fact, in this case, when one of the Federal agents was served with a notice he got into a conversation with him discussing his gambling past and asked for an application for a gambling tax. He is a gambler. He has always stated that, your Honor.

The sad thing about this, your Honor, the very sad thing is that a coalescing of events makes a rather simple business as usual gambling matter into a serious Federal offense.

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1 This is a lesson that would certainly bring
2
3 to Mr. DiRienzo, in a very severe way, your Honor. I
4 might add, too, that since this prosecution, your Honor,
5 Mr. DiRienzo advised me he has retired from the gambling
6 business. He has done it for two years, your Honor, one,
7 that it is wrong, and he also has a selfish motive in that
8 he is a sick man and as a result of this prosecution, your
9 Honor, he and his family have suffered immeasurably. He
10 has a heart condition, he was hospitalized for it in 1974.
11 He still suffers from heart ailments. He has diabetes
12 and high blood pressure. I believe you have the
13 doctors' letters attached, your Honor.

14 For these reasons, your Honor, if I may reiter-
15 ate, he has learned his lesson. I don't think the
16 Government need be concerned of any future encounters
17 with Mr. DiRienzo, and two, he and his family have suffered
18 and we ask the Court in imposing sentence to, as I know the
19 Court will do, impose a fair and just sentence, tempered
20 with mercy.

21 THE COURT: Mr. DiRienzo, is there anything you
22 want to say on your own behalf before imposition of
23 sentence?

24 MR. SUDLEY: Yes, your Honor, the Government
25 wishes to state to the Court that unlike the other defend-

ewb

4

ants in this case, Mr. DiRienzo pleaded guilty only a moment before trial, necessitating the Government to prepare its entire case for that proceeding, your Honor, and that is all the Government has to say.

If I might respond very briefly, your Honor.

THE COURT: That doesn't make any difference. He has the option to plead any time he wants to, and it is up to the Government to have their cases prepared. That doesn't play any part in the sentence.

DiRienzo's criminal record, however, dates back to 1933, and he has been arrested nearly 70 times, namely for policy and two bootlegging offenses. He also has a pending bribery charge in the Bronx Supreme Court.

MR. ZUCKERMAN: That is correct.

THE COURT: Apparently he has a legitimate food and grocery business in the Bronx, and has maintained it for nearly 15 years, but during that time he has also been active in illegal gambling enterprises.

It is the judgment of the Court that the defendant be committed to the custody of the Attorney General or his authorized representative for a term of two years, and fined the sum of \$1500, payable in ten days, to be a committed fine, on the condition that the defendant be confined in a jail-type institution for a period of one

ewb

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month, the execution of remainder of the sentence of imprisonment only is hereby suspended and the defendant is placed on probation for a term of three years on the usual terms and conditions of probation.

I believe there is an open count.

MR. SUDLEY: The Government moves to dismiss Count 1 of the indictment, your Honor.

THE COURT: Dismissed.

MR. ZUCKERMAN: Insofar as surrendering, your Honor, is that forthwith? May we have a reasonable time before he goes in, your Honor?

THE COURT: What is a reasonable time, tomorrow, the next day?

MR. ZUCKERMAN: Until Friday, your Honor.

THE COURT: All right, surrender on Friday, September 24.

MR. ZUCKERMAN: If your Honor please, the defendant intends to appeal, your Honor. May we --

THE COURT: The judgment and the fine are both stayed pending an appeal if promptly taken and prosecuted.

MR. ZUCKERMAN: Thank you, your Honor.

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

Elizabeth Whittell

Official Court Reporter
U. S. District Court

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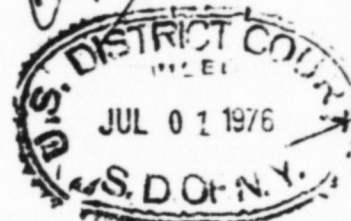
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

v. :

FRANK CARUSO, ROBERT D'ADDARIO, MICHAEL :
DITURI, MICHAEL DI RIENZO, ANDREW :
DI SIMONE, JOSEPH BUGLIARELLI, :
LEO FARANDA, CARMINE GAGLIANO, JOSEPH :
MESSINA, DANIEL LATELLA, and :
EMIL ANNATONE, :

Defendants. :
-----X



75 CR. 1157(MP)

OPINION

446.99

APPEARANCES:

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MILTON POLLACK, District Judge.

MILTON POLLACK, District Judge.

The defendants have moved to suppress the fruits of state and federal wiretaps obtained pursuant to eight state and three federal orders essentially on the grounds that the state tapes were not sealed "immediately" upon the termination of the taps and that the federal taps were derived from the state taps. The claim is also made that the affidavits submitted by an FBI agent as part of the government's application for the three federal taps were insufficient to authorize the use of wiretaps as an investigative technique and that other traditional means were sufficient and should have been employed.^{1/}

At the conclusion of the hearing on suppression and following due deliberation, the Court denied the motions to suppress and announced that an opinion would follow. The Court's decision was made in this way to give the parties the benefit of the time intervening before the scheduled trial date to prepare for trial in the light of the decision reached.

^{1/} The motions of the defendants raised various objections to the wiretaps including failure to provide for post-interception notice, lack of minimization, improper sealing of the federal tapes and insufficiency of the wiretap orders. All objections were withdrawn, however, except for the two mentioned above, i.e., untimely sealing of the state tapes and the insufficiency of the affidavits submitted in support of the federal wiretap applications.

The defendants herein are charged in a two count Indictment alleging that they wilfully and knowingly conducted an illegal gambling business in violation of Title 18, United States Code, Sections 1955 and 2. The instant prosecution is the culmination of an investigation of the alleged gambling combine. The investigation was initially conducted by the office of the District Attorney of Bronx County, New York, in conjunction with the New York City Police Department, and subsequently involved the Federal Bureau of Investigation. The state wiretap orders -- not all of which intercepted people or places involved herein -- were issued from September 1973 until July 1974. In about February 1974 the surveillance was compromised by an unauthorized leak to members of the combine that their phones were being tapped. In April 1974 the state authorities learned that the FBI was pursuing a parallel investigation and the efforts of the two agencies were combined. The District Attorney's office thereafter conducted the so-called Vaccarelli and Faranda state wiretaps.

Subsequently, the FBI made use of the results of the state intercepts to establish the "probable cause" necessary

to obtain three authorizations for federal wiretaps from Judges Ward, Owen and Motley (the last tap was an extension of Judge Owen's) from July to October, 1974. The tapes resulting from these three taps are those which the government intends to introduce at trial; none of the state tapes will be utilized as evidence.

I

At the threshold, the government contends that most of the defendants have no standing to challenge the use of the state tapes and the information derived therefrom in obtaining the federal wiretaps.

It is settled that only those whose conversations were intercepted or against whom the interception was directed, or on whose premises the conversations took place, may assert the unlawfulness of the interception. 18 U.S.C. § 2510(11); Alderman v. United States, 394 U.S. 165, 176 (1969); United States v. Wright, 524 F.2d 1100, 1102 (2d Cir. 1975); United States v. Bynum, 513 F.2d 533, 534-35 (2d Cir.), cert. denied, --U.S.--(1975).

None of the state wiretaps was directed against any defendant herein who was not intercepted, and none of the intercepted conversations occurred on the premises of any defendant who was not himself intercepted. The defendants who were not intercepted thus have no standing to challenge

the state taps directly. While these defendants may have been intercepted in the course of the federal taps, they may not contest the federal taps on grounds derived exclusively from alleged defects in the state taps as to which they are not "aggrieved persons." United States v. Wright, supra.

Applying these principles, the evidence shows that four of the state wiretaps did not involve the interception of any of the eleven defendants herein; two of the remainder were sealed promptly after only one or two days following their terminations and are not challenged on the ground of delayed sealing by any defendant. The remaining two state taps intercepted only three defendants, D'Addario, Dituri and Faranda in one (that issued by Justice Bernstein on January 24, 1974, the "G & D" tap), and one defendant, Dituri, in the other (issued by Justice Bloom on December 10, 1973, the "Social Club" tap). Thus, only these three defendants have standing to assert that the federal taps were tainted by the delay in sealing of the two previous state taps, and only one of those three may assert sealing defects in both state taps.

II

Section 2518(8)(a) of Title 18, U.S.C., proscribes the use at trial of intercepted conversations or "evidence derived therefrom" unless the tape bears a judicial seal or

a "satisfactory explanation" is provided for its absence. This section has been held to be equally applicable where, although a seal is present, there has been a delay in the sealing process. See United States v. Gigante, No. 76-1128 (2d Cir., June 22, 1976); United States v. Poeta, 455 F.2d 117, 122 (2d Cir.), cert. denied, 406 U.S. 948 (1972). The law of New York, which is applicable only to the extent it is more restrictive than federal law, see United States v. Marion, No. 75-1408 (2d Cir., May 7, 1976), appears to be the same. See People v. Simmons, --Misc. 2d --, 378 N.Y.S.2d 263, 266 (N.Y. Sup. Ct. 1975).

Thus, suppression of the federal tapes is warranted on behalf of the defendants D'Addario, Dituri and Faranda only if (1) there is no satisfactory explanation for the delay in sealing of the two state taps, and (2) the federal tapes constitute "evidence derived" from state taps which they have standing to challenge.^{2/} As is explained below,

^{2/} The government contends that sealing defects in the state taps--even the total absence of a seal--could not justify suppression of the federal taps because 18 U.S.C. § 2518(8) (a) prohibits only the disclosure of unsealed tapes at trial, not the use of such tapes to establish probable cause for subsequent taps. The government contends that the latter use, which is all that is at issue in this case, is specifically authorized by §§ 2517(1), (2), which permit a law enforcement officer to make use of tapes to the extent "appropriate to the proper performance of his official duties."

This argument is unpersuasive, however, for it overlooks the plain language of § 2518(8) (a). That statute proscribes not merely the use at trial of an unsealed tape, but also

neither of these factors is present in the instant case; accordingly, the federal tapes may not be suppressed on this ground.

Having seen and heard the witnesses and considered the circumstances and the other evidence bearing on the issue, I decide and find that the delays in sealing the "Social Club" tapes were satisfactorily explained, did not derive from any purpose to obtain tactical advantages for the surveilling parties or the state prosecutors, and no investigative benefits were sought or obtained by the delays. There is no evidence whatsoever of

2/(continued)

the use at trial of any "evidence derived therefrom." Hence, if the federal tapes are so derived, § 2518(8)(a) mandates their suppression in the absence of a satisfactory explanation for the delay in sealing of the state tapes from which they were derived.

The provisions of §§ 2517(1), (2), relied upon by the government, presumably immunize law enforcement officers from criminal and civil liability under §§ 2511, 2520 for their intra-office use of tapes; they do not compel the admissibility at trial of evidence derived from intercepts procured in violation of the law.

tampering with the tapes from the date of the termination of the tap until the date of the seal. The delays encountered by the efforts of the Police to ready the tapes for sealing and to duplicate the Social Club tapes and the internal discussions in the District Attorney's office looking to continuance of the interception adequately explain and sufficiently justify, under the peculiar circumstances, the 24 day delay in sealing the Social Club tapes.

In respect to the G & D tapes, there was a tip-off to the targets of the tap, as the tape apparently confirms, resulting in a decision to terminate that tap before the date to which it had been authorized. The discovery of this misconduct brought on a flurry of excitement and confusion followed by the unexpected hospitalization of the Assistant District Attorney in charge and ultimately the re-assignment of the case to another assistant district attorney. In the course of picking up ^{the} threads, the latter discovered that the tapes so terminated had not been sealed and he immediately cured the defect.

While the duration of this sequence of events, 42 days, stretches the time periods of delay in sealing previously held to be satisfactorily explained, every case is sui generis. The sealing delay yielded no benefit to the surveilling authorities, was not sought for such a purpose, gave no one any tactical advantage and no tampering was either suspected or hinted or established in the premises by any party. I decide and find, having had the benefit of seeing and hearing the witness produced, evaluating his testimony on its own intrinsic merit and in the circumstances and on the basis of all the evidence bearing in any way on the issue, that a sufficient and satisfactory explanation had been established for the delay in sealing, and that it was not untimely.

As to the second factor listed above, it appears that the federal tapes do not constitute "evidence derived" from the state taps at issue here. While the application for the federal wiretap orders relied almost exclusively on information obtained from the prior state intercepts, the two intercepts which the defendant Dituri has standing to challenge, and the single intercept which the defendants D'Addario and Faranda may challenge, played a minor role in the applications.

Examination of the affidavits and information submitted in support of the federal wiretap orders shows

that neither of the two state taps subject to challenge, either alone or in conjunction, was necessary to the establishment of probable cause on which such orders issued. Since the mere inclusion of illegally obtained evidence in an application for a wiretap authorization does not vitiate the order in such circumstances, see United States v. Ceraso, 355 F. Supp. 126, 129 (M.D. Pa. 1973), the federal taps would not be affected by the delay in sealing of the two state taps even if there were no satisfactory explanation for the delay.

Although the opinion of the Supreme Court in United States v. Giordano, 416 U.S. 505, 533 n.19 (1974), casts some doubt on the validity of this "independent source" rule in some contexts, it appears appropriate to apply it on the facts of this case, see 416 U.S. at 559 n.7 (Justice Powell, dissenting in part).

III

The defendants make a direct challenge to the federal wiretaps by asserting that one of the affidavits supporting the applications for the federal orders was insufficient to meet the requirements of 18 U.S.C. § 2518(1)(c). That provision requires that every application for a wiretap order include--

a full and complete statement as to whether or not other investigative procedures

have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

The purpose of the § 2518(1)(c) statement is to assure that wiretapping is not routinely employed as a first resort in criminal investigations. See United States v. Kahn, 415 U.S. 143, 153 n.12 (1974); United States v. Giordano, 416 U.S. 505 at 515, supra. That purpose was clearly achieved in the investigation at issue here.

The affidavit adequately explained to the issuing judge why traditional investigative techniques alone would have been unlikely to succeed. As the affidavit indicated, the pursuit of gambling crime involves the absence or quick disappearance of records of gambling establishments, and the usually undecipherable or difficult-to-comprehend argot which is employed for concealment of the true nature of the activity. In this case the government was faced with an informer's apprehension and actual unwillingness to testify, and the fact that previous physical surveillance of the suspects had already been conducted. Additionally, the agent, experienced in such matters, pointed to the usual insulation of higher-ranking members of a gambling enterprise from day-to-day operations and the probable inadequacy of traditional techniques to discover their

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identities.

The judge was thus supplied with far more than mere conclusions of the affiant--the shorthand factual statements of the affidavit contained a significance not lost on him. It would be unreasonable to blink at such proofs and to blind oneself to the realities of urban crime and the layering of its participants.

Strict compliance with the strictures imposed by Title III is of course essential. United States v. Marion, supra. However, compliance is not to be defined in unrealistic terms or without regard to the attributes of the specific crime under investigation. Section 2518(1)(c) does not impose impossibly burdensome standards; indeed, the investigation of a criminal enterprise widely understood to be largely and routinely conducted over the telephone may reasonably require electronic surveillance in conjunction with more traditional techniques. See United States v. Steinberg, 525 F.2d 1126, 1130 (2d Cir. 1975).

To the extent that United States v. Kalustian, 529 F.2d 585 (9th Cir. 1975), relied upon by defendants, suggests that the affidavit in this case is insufficient, it does not reflect the law of either this circuit, see United States v. Steinberg, supra, or others, see, e.g., United States v. Armocida, 515 F.2d 29, 38 (3d Cir. 1975),

cert. denied, --U.S.--; United States v. Schaefer, 510 F.2d 1307, 1310 (8th Cir.), cert. denied, 421 U.S. 975 (1975); United States v. Robertson, 504 F.2d 289, 293 (5th Cir. 1974), cert. denied, 421 U.S. 913 (1975); United States v. Bobo, 477 F.2d 974, 983 (4th Cir. 1973), cert. denied, 421 U.S. 909 (1975); United States v. Fina, 405 F. Supp. 267, 272-73 (E.D. Pa. 1975) (explicitly rejecting Kalustian).

The defendants place special emphasis on the fact that the government procured a search warrant a few weeks after the extension of the second federal wiretap. This circumstance does not affect the result reached here, however. While the affidavit supporting the wiretap order questioned the efficacy of such a search, it neither indicated that a search would be entirely without value nor stated that it would not be performed. Moreover, the affidavit supporting the search warrant did not suggest that such a search, by itself, could or would produce all the evidence necessary to prove all the elements of the offense against the suspects. Thus, the existence of the subsequent search in no way indicates that traditional investigative techniques would have been adequate to the task at hand.

Although this analysis suggests that the alleged

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inconsistency between the two supporting affidavits is more superficial than real, there is little doubt that greater candor in the government's affidavits was in order; there would have been little jeopardy to the government's position had its affidavit supporting the wiretap application admitted that a search would likely prove fruitful to some degree, though only in conjunction with--and presumably after the completion of--electronic surveillance.

In sum, the motions for suppression of the three federal wiretaps which the government intends to use as evidence at trial are denied.

So Ordered.

Milton Pollack
United States District Judge

July /st 1976

Judgments and Commitments Appealed From

United States of America vs.

United States District Court for

FRANK CARUSO

THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

587

DOCKET NO. 75 CR. 1157

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (8/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR

Sept. 20, 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel

☒ WITH COUNSEL

James M. La Rossa

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that ☐ NOLO CONTENDERE, ☐ NOT GUILTY
there is a factual basis for the plea, as to count 2 only.FINDING &
JUDGMENTThere being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct & own an illegal gambling business to wit, a sports betting & mutual race horse policy business, (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 & 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct & own a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of 30 days, and having a gross revenue of \$2,000. in a single day. (T.18, U.S.C., Sections 1955 and 2.)

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment ~~on~~ on count 2 for a term of TWO(2)YEARS, and on condition that defendant be confined in a JAIL TYPE institution for a period of ONE(1)YEAR, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period of THREE(3)YEARS, subject to the standing probation order of this Court. T. 18, Section 3651, U.S. Code.

-AND-

SPECIAL
CONDITIONS
OF
PROBATION

FINED \$2,000. to be paid within ten days or the defendant is to stand committed until the fine is paid or he is otherwise discharged according to law.

ADDITIONAL
CONDITIONS
OF
PROBATION

Count 1 is dismissed on motion of defendant's counsel with consent of the Government.

Execution of sentence stayed pending appeal.
Defendant is continued on present bail pending appeal.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT
RECOMMEN-
DATION

BEST COPY AVAILABLE

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

MILTON POLLACK

Date Sept. 20, 1976

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified official.



DEFENDANT

MICHAEL DIRLENZO

a/k/a "The Fish"

THE SOUTHERN DISTRICT OF NEW YORK

581

DOCKET NO.

75 CR. 1157

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
Sept. 20, 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Gerald Zuckerman and Allen Yorio

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY, as to count 2 only.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct & own an illegal gambling business, to wit, a sports betting & mutual race horse policy business, (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 & 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct & own a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of 30 days, and having a gross revenue of \$2,000. in a single day. (T. 18, U.S.C. Sections 1955 and 2.)

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment ~~on~~ on count 2 for a term of TWO(2)YEARS, and on condition that defendant be confined in a JAIL TYPE institution for ONE(1)MONTH, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period of THREE(3)YEARS, subject to the standing probation order of this Court. T.18, Section 3651, U.S. Code.

-AND-

SPECIAL
CONDITIONS
OF
PROBATION

FINED \$1,500. to be paid within ten days or the defendant is to stand committed until the fine is paid or he is otherwise discharged according to law.

Count 1 is dismissed on motion of defendant's counsel with consent of the Government.

Execution of sentence stayed pending appeal.

Defendant is continued on present bail pending appeal.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may, change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

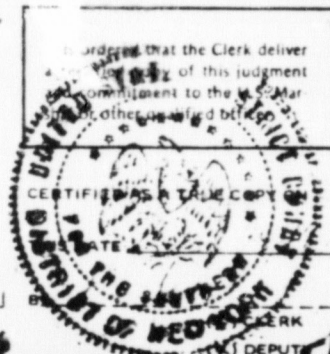
COMMITMENT
RECOMMEN-
DATION

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

MILTON POLLACK

Date Sept. 20, 1976



DEFENDANT

EMIL ANTONIO

THE SOUTHERN DISTRICT OF NEW YORK

582

DOCKET NO. 75 CR. 1157

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (8/74)

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
Sept. 20, 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel

☒ WITH COUNSEL

Michael Diersen

(Name of Counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY
as to count 2 only.FINDING &
JUDGMENTThere being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct & own an illegal gambling business to wit, a sports betting & mutual race horse policy business, (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 & 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct & own a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of 30 days, and having a gross revenue of \$2,000. in a single day. (T.18, U.S.C., Sections 1955 and 2.)

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment ~~on~~ **count 2** for a term of TWO(2)YEARS, and on condition that defendant be confined in a JAIL TYPE institution for a period of FOUR(4)MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period of THREE(3)YEARS, subject to the standing probation order of this Court. T. 18, Section 3651, U.S. Code.

-AND-

SPECIAL
CONDITIONS
OF
PROBATION

FINED \$2,000. to be paid within ten days or the defendant is to stand committed until the fine is paid or he is otherwise discharged according to law.

Count 1 is dismissed on motion of defendant's counsel with consent of the Government.

Execution of sentence stayed pending appeal.

Defendant is continued on present bail pending appeal.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

MILTON POLLACK

Date

Sept. 20, 1976

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal for qualified officers.



33

DEFENDANT

ROBERT D'ADDARIO

THE SOUTHERN DISTRICT OF NEW YORK

583

DOCKET NO.

75 CR. 1157

JUDGMENT AND PROBATION/COMMITMENT ORDER

AQ 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR

Sept. 20, 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Eugene F. Mastropieri

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea, **as to count 2 only.**☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☐ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct & own an illegal gambling business to wit, a sports betting & mutual race horse policy business, (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 & 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct & own a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of 30 days, and having a gross revenue of \$2,000. in a single day. (T.18, U.S.C., Sections 1955 and 2.)**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that ~~the defendant be sentenced to imprisonment for a term of two years.~~

The imposition of prison sentence on count 2 is suspended. Defendant is placed on Probation for a period of TWO(2) YEARS, subject to the standing probation order of this Court.

-AND-

FINED \$1,000. to be paid within ten days or the defendant is to be committed until the fine is paid or he is otherwise discharged according to law.

SPECIAL
CONDITIONS
OF
PROBATION

Count 1 is dismissed on motion of defendant's counsel with consent of the Government.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

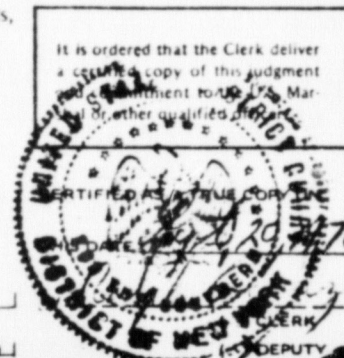
COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

MILTON POLLACK

Date **Sept. 20, 1976**

DEFENDANT

JOSEPH MESSIA

THE SOUTHERN DISTRICT OF NEW YORK

584

DOCKET NO. 75 CR. 1157

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (8/74)

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
Sept. 20, 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Edward S. Panner

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea, as to count 2 only.☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☐ GUILTY.FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct & own an illegal gambling business to wit, a sports betting & mutual race horse policy business, (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 & 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct & own a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of 30 days, and having a gross revenue of \$2,000. in a single day. (T.18, U.S.C., Sections 1955 and 2.)**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment **suspended on count 2 for a term of TWO(2) YEARS, and on condition that defendant be confined in a JAIL TYPE institution for a period of TWO(2) MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period of THREE(3) YEARS, subject to the standing probation order of this Court. T. 18, Section 3651, U.S. Code.**

-AND-

SPECIAL
CONDITIONS
OF
PROBATION

FINED \$2,000. to be paid within ten days of the defendant is to and committed until the fine is paid or he is otherwise discharged according to law.

ADDITIONAL
CONDITIONS
OF
PROBATION

Count 1 is dismissed on motion of defendant's counsel with consent of the Government.

Execution of sentence stayed pending appeal.

Defendant is continued on present bail pending appeal.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

MILTON POLLACK

Date Sept. 20, 1976

It is ordered that the Clerk deliver a certified copy of this judgment to the defendant, the U.S. Marshal, and other qualified persons.



DEFENDANT

MICHAEL DOWDY

THE SOUTHERN DISTRICT OF NEW YORK

585

DOCKET NO. 75 CR. 1157

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
Sept. 20, 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Murray Richman

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that
there is a factual basis for the plea, as to count 2 only.

☐ SOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☐ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct & own an illegal gambling business to wit, a sports betting & mutual race horses pool by business, (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 & 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct & own a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of 30 days, and having a gross revenue of \$2,000. in a single day. (18, U.S.C., Sections 1955 and 2.)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment hereafter on

count 2 for a term of TWO(2) YEARS, and on condition that defendant be confined in a JAIL TYPE institution for a period of TWO(2) MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period of THREE(3) YEARS, subject to the standing probation order of this Court. -Title 18, Section 3651, U.S. Code. -

SENTENCE
OR
PROBATION
ORDER

-AND-

SPECIAL
CONDITIONS
OF
PROBATION

FINED \$1,500. to be paid within ten days or the defendant is to stand committed until the fine is paid or he is otherwise discharged according to law.

Count 1 is dismissed on motion of defendant's counsel with consent of the Government.

Execution of sentence stayed pending appeal.
Defendant is continued on present bail pending appeal.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends:

COMMITMENT
RECOMMEN-
DATION

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

MILTON POLLACK

Date Sept. 20, 1976

It is ordered that the Clerk deliver a certified copy of this judgment and recommendation to the U.S. Marshal or other qualified person.



54

Notices of Appeal of Appellants

S. 00729

586

SEP 21 11 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

v.

FRANK CARUSO,

Defendant.
-----X

NOTICE OF APPEAL

Docket No. 75 Crim. 1157

POLLACK, J.
(District Court Judge)

Notice is hereby given that the defendant Frank Caruso appeals to the United States Court of Appeals for the Second Circuit from the Judgment entered in this action on September 20th, 1976.

JAMES M. LA ROSSA
(Counsel for Appellant)

James M. La Rossa
522 Fifth Avenue *by Joel Cohen*
New York, New York 10036

687-4100

Date: September 20th, 1976

To: Robert Fiske
United States Attorney
Southern District of New York

FRANK CARUSO
c/ JAMES M. LA ROSSA
522 FIFTH AVE.
NEW YORK, N.Y. 10036

9/21/76
gjm

587

UNITED STATES DISTRICT COURT
Southern District of New York

United States of America

Docket Number

75 Cr. 1157 MP

v.
Frank Caruso etc.

Hon. Milton Pollack
(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that

Michael DiRienzo

appeals to

the United States Court of Appeals for the Second Circuit from the

☐ Judgment ☐ Order ☐ Other

(specify)

entered in this action on

September 20, 1976

(Date)

Date

September 21, 1976

To:

Robert B. Fisk Jr.

U.S. Attorney

Address

Gerald Zuckerman
(Counsel for Appellant)

36 West 44 St.

New York, N.Y. 10036

and Albert Yorio

65 Court St.

White Plains, N.Y.

914 428-3368

Phone Number

682-5315

Michael DiRienzo
2345 Bruner Ave.
Long Beach, CA

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

TRANSCRIPT ORDER

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

☐ I am ordering a transcript

☒ I am not ordering a transcript

Reason:

☐ Daily copy is available

☐ U.S. Attorney has placed order

☐ Other. Attach explanation

Prepare transcript of

☒ Pre-trial proceedings

☐ Trial

☒ Sentence

☐ Post-trial proceedings

Suppression hearing

Client to soon advise re matter

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b))

Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

Gerald Zuckerman

DATE

9/21/76

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date

Signature

(Court Reporter)

ORIGINAL

57

588

5. 10/21

SEP 23 4 12 PM '76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

v.

EMIL ANNATONE, et al.,

Defendant.
-----X

NOTICE OF APPEAL

Docket No. 75 Crim. 1157

POLLACK, J.
(District Court Judge)

Notice is hereby given that the defendant Emil Annatone
appeals to the United States Court of Appeals for the Second
Circuit from the Judgment entered in this action on September
20th, 1976.

Michael P. Dranzo

MICHAEL P. DIRENZO
(Counsel for Appellant)

15 Columbus Circle
New York, New York 10023

541-7740

Date: September 21st, 1976

By:

John W. Mitchell
JOHN W. MITCHELL

To: Robert Fiske
United States Attorney
Southern District of New York

Defendant's Address:

3 HICKORY HILL ROAD
EAST CHESTER, N.Y.

10709

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Free Paid 9,502

589

UNITED STATES OF AMERICA

Docket Number 75 CR 1157

- v -

JUDGE MILTON POLLACK

ROBERT D'ADDARIO,

(District Court Judge)

Defendant.

NOTICE OF APPEAL

ROBERT D'ADDARIO

Notice is hereby given that _____ appeals to

the United States Court of Appeals for the Second Circuit from the ☐ Judgment ☒ Order ☐ other

(specify) MOTION - AND DENIAL entered in this action on June 1, 1976

(Date)

EUGENE F. MASTROPIERI

(Counsel for Appellant)

Address 67-40 Myrtle Avenue
Glendale, New York, 11227

(212) 821-2210

Date September 27, 1976

To: U.S. ATTORNEY FOR SOUTHERN DISTRICT
OF NEW YORK

ROBERT D'ADDARIO
2275 Barker Avenue
Bronx, N.Y., 10467

Phone Number _____

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

- ☒ I am ordering a transcript
☐ I am not ordering a transcript

Reason:

- ☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

TRANSCRIPT ORDER

- Prepare transcript of
☒ Pre-trial proceedings
☐ Trial
☐ Sentence
☐ Post-trial proceedings

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (F.R.A.P. 10(b)) ☒ Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S signature

Eugene F. Mastropieri

DATE

9-28-76

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

ORIGINAL

60

5.00 PM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK 590

U. S. A.
v.
JOSEPH MESSINA,
ET AL

Docket Number 75 CR 1151
HON. MILTON
POLLACK
(District Court Judge)

SEP 20 1976
2:47 PM '76
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NOTICE OF APPEAL

Notice is hereby given that JOSEPH MESSINA appeals to
the United States Court of Appeals for the Second Circuit from the X Judgment order other
(specify) OF CONVICTION entered in this action on SEPT 27, 1976
(Date)
TO: ANSA AB247 - STRIKE FORCE
3RD FLOOR
U.S. CT HOUSE ANNEX
1 ST ANDREW PLAZA Address EDWARD S PANZER
NYC NY 10007 (Counsel for Appellant)
Date 9/28/76 299 BOWAY NYC 10007
To: JOSEPH MESSINA
68-29 MIDDLE VILLAGE
79 ST
QUEENS, NY 11379 Phone Number 3446128

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE	TRANSCRIPT ORDER	DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).
<input type="checkbox"/> I am ordering a transcript <input type="checkbox"/> I am not ordering a transcript Reason: - <u>CO ATTORNEY ORDERING TRANS</u> <input type="checkbox"/> Daily copy is available <input type="checkbox"/> U.S. Attorney has placed order <input type="checkbox"/> Other. Attach explanation	Prepare transcript of <input checked="" type="checkbox"/> Pre-trial proceedings <input type="checkbox"/> Trial <input type="checkbox"/> Sentence <input type="checkbox"/> Post-trial proceedings	

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ☒ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature Edward S Panzer DATE 9/28/76

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages.
---------------------	---------------------------	----------------------------

Date _____ Signature _____
(Court Reporter)

ORIGINAL

6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :

- v - :

MICHAEL DITURI, :

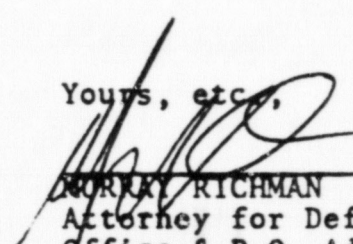
Defendant. :

-----X
TO: HONORABLE MILTON POLLACK
UNITED STATES DISTRICT JUDGE

NOTICE OF APPEAL
75 CR 1757-MP

PLEASE TAKE NOTICE, that the above-named defendant, hereby appeals to the court of appeals, Second Circuit of the State of New York for the First Judicial Department, from a judgement of conviction rendered against him on the 20th day of September, 1976 in the United States District Court, Southern District of New York and from each and every part of such judgement.

Yours, etc.,


MURRAY RICHMAN

TO: Clerk of the Court
United States District Court
Foley Square
New York, New York

Attorney for Defendant
Office & P.O. Address
1930 Grand Concourse
Bronx, New York

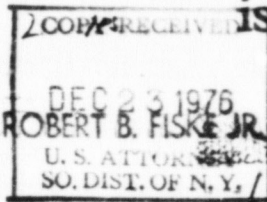
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK

COURT OF APPEALS
SOUTHERN DISTRICT OF NEW YORK

Fee Pd - 500

AA
SEP 30 1976

two
Service of ~~three~~ 2 copies of the writ in
is admitted this 23rd day of December 19 76



UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT